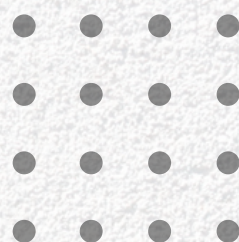
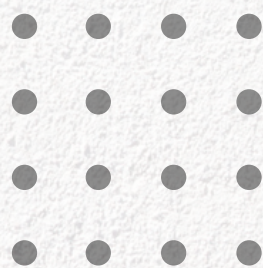


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THE TRIAD OF EMOTIONS (FEAR, ANGER AND TRUST) AS A STRATEGIC TOOL IN PRO-RUSSIAN DISINFORMATION IN POLAND¹

ABSTRACT: Disinformation campaigns in Europe increasingly use emotional appeals as a weapon of hybrid warfare. Yet, the role of such emotional configurations within disinformation narratives remains conceptually underestimated. This limits political institutions' ability to effectively counter their influence. Most previous research catalogued individual emotions, overlooking their interaction and strategic integration into the cognitive-emotional field. To address this gap, we conducted a network analysis of 745 English-language summaries of pro-Russian disinformation messages written in Polish, from the EUvsDisinfo database (2016–2023). This approach enabled us not only to identify dominant emotions but also to trace their interconnections and functional roles within the structure of disinformation discourse. The results show that fear, anger, and trust form the triad of emotions. This triad creates a semantic bridge between various thematic clusters (security, political leadership, diplomacy). Contrary to traditional perceptions of trust as a “positive counterbalance”, it functions as a catalyst for manipulation, legitimizing negative narratives. Temporal analysis revealed that peaks in the triad's use coincide with political crises, revealing its opportunistic adaptation to national vulnerabilities. This study introduces the concept of the cognitive-emotional field as a new tool to analyze hybrid information strategies. It changes the understanding of emotions in disinformation viewing them as an integrated architecture of influence rather than isolated appeals. For scholars, this enables comparative research across different countries. For practitioners, it offers a basis for counter-strategies focused on emotional patterns, not just on fact-checking.

KEYWORDS: disinformation; hybrid warfare; EUvsDisinfo; sentiment network analysis.

1. Introduction

Human thinking is accompanied by a variety of subjective experiences, including moods and emotions, metacognitive feelings (such as ease of recall or fluency of perception), and bodily sensations (Schwartz, 2001). Emotions influence how we perceive information and what we believe, eg., we may experience a sense of threat when something contradicts our beliefs, which shape our social identity (Robertson et al., 2022; Van Bavel & Pereira, 2018). Emotions enable us to detect, process, and remember the emotional components of

¹ This study was conducted in the framework of the Jean Monnet Module “EU Counteraction to FIMI” (No. 101172342 ERASMUS-JMO-2024-MODULE).

information (Mather & Sutherland, 2011). In the case of disinformation, emotions promote intuitive thinking, increase reliance on heuristics and familiar material, and distract from the quality of information (Ecker et al., 2022). Ecker et al. (2022), Martel et al. (2020), Pennycook & Rand (2021) claim that emotions reduce deliberation and analytical thinking, and increase belief and the spread of misinformation. When we focus more on emotions rather than on reason, it becomes harder for us to distinguish between real and fake political news (Martel et al., 2020) and this is amplified by our personal emotional state (Ecker et al., 2022; Schwarz, 2001). Thus, emotions generally counteract logical thinking and negatively affect judgment, which may particularly apply to negative emotions and emotions of high arousal, such as anger and fear (Lühring et al., 2024).

Modern disinformation campaigns are sophisticated forms of hybrid warfare that operate through strategic emotional manipulation, not merely through distortion of facts. Vosoughi et al. (2018) proved that “falsehood diffused significantly farther, faster, deeper, and more broadly than the truth <...> and the effects were more pronounced for false political news than for false news about terrorism, natural disasters, science, urban legends, or financial information”. Having compared the language of false news to the real one of real news from an emotional perspective, considering a set of false information types (propaganda, hoax, clickbait, and satire) from social media and online news article sources, Ghanem et al. (2020) showed that false information has different emotional patterns in each of its types, and emotions play a key role in deceiving the reader. Systematic reviews of disinformation detection methods show growing attention to the emotional characteristics of messages (Liu et al., 2023), however, they point out the challenges of multilingualism, multimodality, and interpretability of models.

Despite active research on the impact of emotions on the spread of disinformation, critical gaps remain. First, most studies analyze individual emotions without considering their strategic combinations; research on “triads of emotions” (e.g., fear–anger–trust) as integrated tools of manipulation is nearly absent. Second, recent reviews emphasize the need to integrate emotions analysis with network-based approaches to uncover the structural role of emotions in linking thematic clusters and to identify their functions as “semantic bridges.” (Liu et al., 2023). Third, the limitations of multilingual resources reduce the accuracy of analyzing local corpora (particularly Polish-language ones), often forcing researchers to work with English-language summaries and thereby losing part of the cultural and stylistic nuances. Fourth, there is a lack of studies that comprehensively account for the temporal dynamics of emotional intensity and its correlation with political events, using modern metrics of dynamic network analysis.

Our study fills this critical gap by proposing a methodologically novel approach that combines emotional tone analysis of texts (based on the NRC Word-Emotion Association Lexicon) with “word–emotion” network analysis and the subsequent construction of unimodal semantic networks. Key indicators –

modularity, betweenness centrality, and closeness centrality – are used to identify the role of the triad of emotions “fear–anger–trust” as “bridges” between thematic clusters. Additionally, temporal analysis is applied to detect reactive and proactive strategies of disinformation campaigns, allowing for the identification of peaks in manipulative activity during periods of domestic political crises. This integrated approach addresses the existing gap in studying combined emotional patterns within network structures and contributes to the development of research tools in information security and media communications.

The central research question this study focuses on is: What are the key emotions that constitute the cognitive-emotional field of disinformation? This question shifts the analytical focus from cataloguing emotional content to understanding the structural relationships and strategic functions of emotions within the architecture of disinformation.

The theoretical innovation lies in conceptualizing emotions not as independent variables, but as components of a strategic triad that creates cognitive-emotional fields through their asymmetric use. We examine in detail how “trust” (a positive emotion) functions as a strategic counterbalance to “fear” and “anger” (negative emotions), forming sophisticated systems of persuasion that exploit psychological vulnerabilities through emotional polarization.

Poland is an ideal subject for this research due to (1) its documented susceptibility to intense pro-Russian disinformation campaigns since 2014, (2) its strategic position within the European security architecture, and (3) the availability of comprehensive data from the EUvsDisinfo database. The country’s experience with democratic transformation, challenges of EU integration, and current political polarization provides a rich context for analyzing how disinformation adapts emotional strategies to local political dynamics.

Based on the outlined theoretical framework and methodological guidelines, the following research questions were formulated to connect conceptual premises with empirical validation:

RQ1: How does the concept of the “triad of emotions” (fear–anger–trust) allow for a rethinking of emotional dominance in pro-Russian disinformation messages, moving beyond simple frequency counts?

RQ2: In what ways does the asymmetric use of trust transform the triad of emotions balance, and how does this asymmetry fit into the cognitive-emotional field of disinformation narratives?

RQ3: How does the function of “semantic bridges” within the triad of emotions enable the integration of thematic clusters into a coherent interpretive system of disinformation?

RQ4: How do changes in the intensity and configuration of the triad of emotions over time reflect reactive and proactive adaptation of disinformation strategies to political events?

2. Research Theoretical Framework

2.1. Emotions in hybrid warfare

Although the term “hybrid warfare” was coined by Frank Hoffman in the early 2000s as «different modes of warfare including conventional capabilities, irregular tactics and formations, terrorist acts including indiscriminate violence and coercion, and criminal disorder, conducted by both sides and a variety of nonstate actors» (Hoffman, 2007:8), it became widely used and deeply studied after 2014, when Putin annexed Crimea. Historians have used the term hybrid warfare simply to describe the concurrent use of conventional and irregular forces in the same military campaign. Mansoor (2012), for example, defined hybrid warfare as “conflict involving a combination of conventional military forces and irregulars (guerrillas, insurgents and terrorists), which could include both state and nonstate actors, aimed at achieving a common political purpose.”

The obvious “novelty” of the RF is that “Russian techniques included the traditional combination of conventional and irregular combat operations, but also the sponsorship of political protests, economic coercion, cyber operations and, in particular, an intense disinformation campaign” (Wither, 2020:8). Russian information warfare seeks to blur the lines between truth and falsehood and create an alternative reality. It exploits existing societal vulnerabilities in target states, attempts to weaken state institutions and undermine the perceived legitimacy of governments (Wither, 2020:8).

A message, formed taking into account cognitive-emotional mechanisms of influence, is aimed at inducing decisions or actions in the target audience that meet the interests of its author. Emotions are essential to rational processes and no decision can occur without emotional involvement (Damásio, 2001; Bonansinga, 2020). Jakob and Hamburger (2024) suggest that effective decision-making be not merely a product of logical deliberation but also relies on the intricate interplay of emotional insights <...> human judgments can easily be influenced by emotional factors, even if they are not necessarily related to the current situation. In the political realm, disinformation campaigns use emotionally charged language to capture attention, reinforce messages, and provoke specific reactions to deepen emotional engagement and influence perceptions and responses to content more intensely (Corbu et al., 2021).

Hybrid warfare is closely linked to emotions, as its key instrument is information influence, which targets not only persuasion but also emotional manipulation. Thus, emotions become a weapon by 1) sowing fear and anxiety to demoralize the population, create panic, and reduce trust in authorities; 2) generating anger and hatred to activate radical sentiments, construct the image of an “enemy,” and foster societal division; 3) evoking sympathy and empathy to mobilize support or justify actions; 4) provoking emotional exhaustion, as a constant stream of negativity leads to apathy, loss of critical thinking, and reduced resistance to disinformation.

In other words, under conditions of hybrid warfare, emotions “trigger” both the emotional and cognitive components of our perception. The fact that an emotional state influences key cognitive processes, namely, attention, memory, and cognitive control, is confirmed by neurobiological research, which shows a deep integration of emotional and cognitive brain networks and their mutual regulation (Okon-Singer et al., 2015). Emotion-cognition interactions refer to the influence of emotional states on cognitive processes, particularly how different emotional valences affect the processing of cognitive and emotional conflicts, especially in dynamic, multisensory contexts (Zinchenko et al., 2020). Emotion information processing plays a vital role in cognitive function, signaling either upcoming danger or potential rewards. Thus, emotions can attract attention (Vuilleumier, 2005). Pessoa (2009) claims that emotion and cognitive control share processing resources and, consequently, can modulate each other.

2.2. “Cognitive-emotional field”

We propose the concept of the “cognitive-emotional field” as a dynamic semiotic-affective sphere shaped by shared ideas, emotional norms, and symbolic communication through media, narratives, and communicative practices. Within this field, cognitive processes (such as evaluation, memory, and attention) are closely intertwined with emotional reactions (such as fear, anger, and empathy), which determines susceptibility to manipulation. This concept shares common ground with the ideas of «emotion schemas» (Izard, 2009) or affective-cognitive structures, where emotions and cognition interact dynamically and can act as mediators of cognitive and motivational processes.

The “cognitive-emotional field” probable properties include: 1) the combination of cognitive content (schemas, archetypes, memes) and emotional content (affective norms, moods, tonalities); 2) collective formation through interaction in social networks, media, and cultural practices; 3) structural embedding via institutional repetition (education, media, religion, family), which shapes patterns of thinking and reaction; 4) definition of emotional boundaries, i.e., which emotions are acceptable or taboo; 5) feedback, resonance, and inertia: changes in one segment trigger waves of change across the entire field.

These properties form the analytical framework of this study.

2.3. Beyond individual emotions: the concept of triad

Traditional approaches to disinformation analysis focused on identifying dominant emotions in fake content (Brian, 2023; Cheung-Blunden et al., 2021), though mental framing (fear, anger, sadness) significantly

influences the spread of false statements (Sadat Hosseini & Staab, 2023). However, this atomistic approach does not reflect the sophisticated emotional architectures that characterize modern disinformation campaigns.

Our theoretical framework suggests that effective disinformation operate through emotional triads, i.e., structured combinations of emotions that produce synergistic effects exceeding their individual impact.

The triad of “fear–anger–trust” represents a particularly powerful configuration, as it combines:

- “fear”: perception of threat and heightened uncertainty (Witte, 1992);
- “anger”: mobilization and action orientation since anger significantly increases the viral potential of fake news (Chuai & Zhao, 2020);
- “trust”: legitimization and cognitive anchoring, as reliance on emotions (including trust) increases susceptibility to believing fake content (Martel, Pennycook, & Rand, 2020).

This combination creates what we call a “cognitive-emotional field”, that is a psychological environment in which rational evaluation is subordinated to emotional processing, allowing otherwise implausible narratives to be accepted. The difference between the initial affective state and the emotional response is considered decisive (Ecker et al., 2022).

2.4. Asymmetric emotional use

The theoretical foundation of our analysis is the concept of asymmetric emotional use, i.e., the strategic deployment of positive emotions (trust) to balance and legitimize negative emotions (fear and anger) (Dunn & Schweitzer, 2005; Zhang et al., 2020).

This asymmetry operates through several mechanisms:

1. Emotional anchoring: trust provides cognitive stability that makes fear and anger appear rational rather than manipulative. When the audience trusts the source or associated actors, negative emotions are interpreted as justified responses to real threats rather than artificially induced anxieties (Dunn & Schweitzer, 2005; Jones, 2019; Zhang et al., 2020).
2. Legitimacy transfer: trust in familiar symbols (national leadership, institutions, values) creates pathways for accepting content that evokes fear or anger about unfamiliar or complex issues (eg., international relations, economic policy, or security threats). In times of crisis, for instance, during COVID-19, fear can trigger a “trust mobilization effect” toward authorities, while anger, conversely, intensifies criticism and sanction-oriented sentiments (Bol et al., 2023; Hough et al., 2010).
3. Resolving cognitive dissonance: the presence of trust reduces the psychological discomfort caused by conflicting information, allowing the audience to maintain a positive self-image while simultaneously accepting divisive content. According to Festinger’s classic theory of cognitive dissonance,

individuals seek to reduce internal disharmony by changing their beliefs or behavior (Festinger, 1957; Braithwaite, 2021).

2.5. Semantic bridges and network effects

Drawing on the theory of semantic framing (Sullivan, 2023; Ruppenhofer et al., 2006), we propose that emotions in disinformation function as “semantic bridges” that connect diverse thematic clusters into a coherent interpretive framework (Semeraro et al., 2022). This network effect enables emotional manipulation to cross thematic boundaries, creating unified worldviews from fragmented information (Scheibenzuber et al., 2023; Scheufele & Iyengar, 2014).

The triad’s bridging function operates through:

- emotional coherence across topics: similar emotional patterns across different themes create perceived consistency (Nabi, 2003),
- hierarchical emotional structuring: trust legitimizes the reliability of fear and anger responses, forming a hierarchy of interpretations (Sullivan, 2023),
- dynamic emotional anchoring: sequential emotional associations build stable interpretive schemas (Semeraro et al., 2022; Nabi, 2003).

Thus, taking into account interdisciplinary research on emotional dynamics in mass communication and social media, the concept of the “triad of emotions” (fear, anger, and trust) can be viewed as an integrated system that determines the nature and intensity of emotional influence. Studies show that negative emotions, particularly fear and anger, often coexist within shared communicative spaces, forming stable thematic connections (links between topics) and contributing to the crystallization of unified interpretive frameworks. At the same time, trust can serve as a critical moderator of this influence, legitimizing negative emotions and making them acceptable to the audience. In other words, the triad is considered not merely as a set of separate emotions, but as an interconnected system in which trust can both legitimize and amplify the impact of negative emotions, and mitigate them.

3. Research Methodology

The theoretical framework served as the basis for the developed operationalization scheme, which includes: measuring the co-occurrence of emotions, analyzing their network centrality, temporal correlation, and asymmetric usage. A methodological approach was also formulated on this basis, aimed at a comprehensive analysis of the dynamics, structural role, and strategic application of emotions in disinformation content.

In this study, the operationalization of the triad of emotions included four dimensions: 1) co-occurrence analysis, which records cases when fear, anger, and trust appear simultaneously in a single message or story-line; 2) network centrality measurement to identify the structural role of each emotion in linking thematic clusters; 3) temporal correlation analysis, which allows for the identification of synchronous changes in the intensity of the triad's emotions during political or social events; 4) assessment of asymmetric usage, where each emotion is examined, including the role of trust as an amplifier or neutralizer of the impact of fear and anger.

3.1. Data and sampling

We analyzed 745 cases of pro-Russian disinformation directed against Poland taken from the EUvsDisinfo database, covering the period 2016–2023¹. Initially, only Polish-language disinformation messages were taken into account. However, a decision was later made to analyze emotional coloring and sentiments based on English-language summaries of the messages. This choice was driven by limitations in access to full versions of disinformation materials and their authentic Polish-language variants. The complete content was unavailable due to the absence of primary sources, missing material at the provided links, or restricted access. The short summaries represented the only accessible source of information for analyzing Polish material, and they were the ones subjected to analysis. Although this approach may result in the loss of semantic depth and linguistic nuances, it nevertheless allows for the standardization of information and enables analysis at the level of general emotional tone and prevailing emotional tactics.

Overall, the selection of disinformation represents professionally processed examples of disinformation identified and debunked by the EU East Stratcom Task Force, providing high-quality, verified cases of coordinated influence operations.

The dynamic distribution shows significant variability: minimal activity during 2016–2018 (a total of 19 messages), a sharp increase in 2019–2021 (534 messages), and stable activity in 2022–2023 (192 messages). This pattern aligns with major political events, including parliamentary elections (2019), presidential elections (2020), constitutional crises (2020–2021), and the period of war in Ukraine (2022–2023).

3.2. Methods and stages of analysis

¹ It should be mentioned that during 2016–2018, the number of messages was relatively low. That was likely due to the fact that the EUvsDisinfo database officially began operating and being populated in 2015, and initially, fact-checkers worked manually; accordingly, the content was added slowly. Later, in 2018, after receiving funding from the European Commission, appropriate software was introduced for fact-checking and verification, which significantly increased the capacity to process the disinformation database.

1) At the empirical level, the study involved collecting a corpus of messages from EUvsDisinfo over a defined period, followed by labeling their emotional component. Emotion coding was carried out using a combined approach: automated analysis with the use of emotion lexicons and contextual models, as well as expert verification. For sentiment analysis, we used NRC Word-Emotion Association Lexicon (Mohammad & Turney, 2013), which allowed us to identify eight main emotions: anger, fear, anticipation, trust, surprise, sadness, joy and disgust, as well as the general polarization (positive or negative) in the content of disinformation materials.

To verify the assumption regarding the statistical predominance of the three most frequent emotions (trust, fear, anger) over the remaining emotions, a set of statistical procedures was applied. Emotions were grouped into two categories: top-3 ($n=3$) and other emotions ($n=5$). Descriptive statistics were presented as arithmetic means, standard deviations, and frequency distributions. To compare the mean values between groups, Student's t-test (two-tailed, $\alpha = 0.05$) for independent samples was used, after testing for equality of variances with Levene's test. As a non-parametric alternative, the Mann–Whitney U test was applied to ensure robustness of the results. The practical significance of the differences was assessed by calculating the effect size using Cohen's d . The hypothesis of uniform distribution of emotions in the corpus was tested using Pearson's χ^2 test. Statistical analysis was conducted in the R environment (version 4.3.0) using the packages *car*, *effsize*, and *dplyr*.

2) Network analysis was applied to construct co-occurrence graphs of emotions and thematic clusters, as well as to calculate centrality measures. The network analysis, conducted following the methodology of Bail (2016) and Rule et al. (2015), involved building bimodal networks in which words were linked to emotions, followed by their transformation into unimodal networks for centrality assessment. The key indicators included modularity class (thematic grouping of content), betweenness centrality (the role of a “bridge” between clusters), and closeness centrality (the potential for rapid information diffusion).

3) Temporal analysis involved the use of correlation and cross-correlation methods to identify synchrony or time lags between emotional patterns. The dynamic analysis focused on tracking changes in emotional intensity over several years and correlating identified peaks with documented political events, allowing for the identification of potential patterns of strategic targeting.

To assess the asymmetric use of trust as a moderator of the influence of fear and anger, moderation analysis was employed, enabling the evaluation of how the strength of this influence varied depending on the level of trust.

4. Research Results

4.1. Quantitative analysis of sentiments, emotions and vocabulary

The analysis of pro-Russian disinformation messages against Poland from 2016 to 2023 (Table 1) revealed an increase in both positive and negative sentiments, peaking in 2021 and subsequently declining. The data indicate that pro-Russian disinformation messages aim to elicit a range of emotional responses among Polish audiences, with a slight predominance of positive emotions (2,900) over negative ones (2,403).

Table 1
Sentiment and emotion analysis in Russian/Pro-Russian disinformation
(2016–2023, NRC Lexicon, based on the EUvsDisinfo Database)

Sentiments/ emotions	2016	2017	2018	2019	2020	2021	2022	2023	total
Sentiments									
positive	2	15	5	281	736	1113	221	527	2900
negative	3	14	5	232	538	895	226	490	2403
difference	-1	1	0	49	198	218	-5	37	497
Emotions									
trust	1	9	6	209	409	619	128	300	1681
fear	2	15	4	172	358	572	157	395	1675
anger	3	6	3	120	281	457	118	260	1248
anticipation	2	7	2	78	231	331	80	184	915
sadness	2	5	1	72	157	277	85	199	798
joy	1	4	0	56	120	186	54	114	535
disgust	1	6	1	42	109	186	46	108	499
surprise	1	0	1	48	87	144	35	80	396

However, the analysis of the most frequently used words revealed a different picture (Figure 1). Words with negative sentiment dominate both in number and frequency. Most high-frequency words (e.g., “war”, “conflict”, “struggle”, “crisis”) carry negative connotations, centered around conflict, threat, and aggression. Positive sentiments are associated with unity, leadership, and cooperation, but are less common.

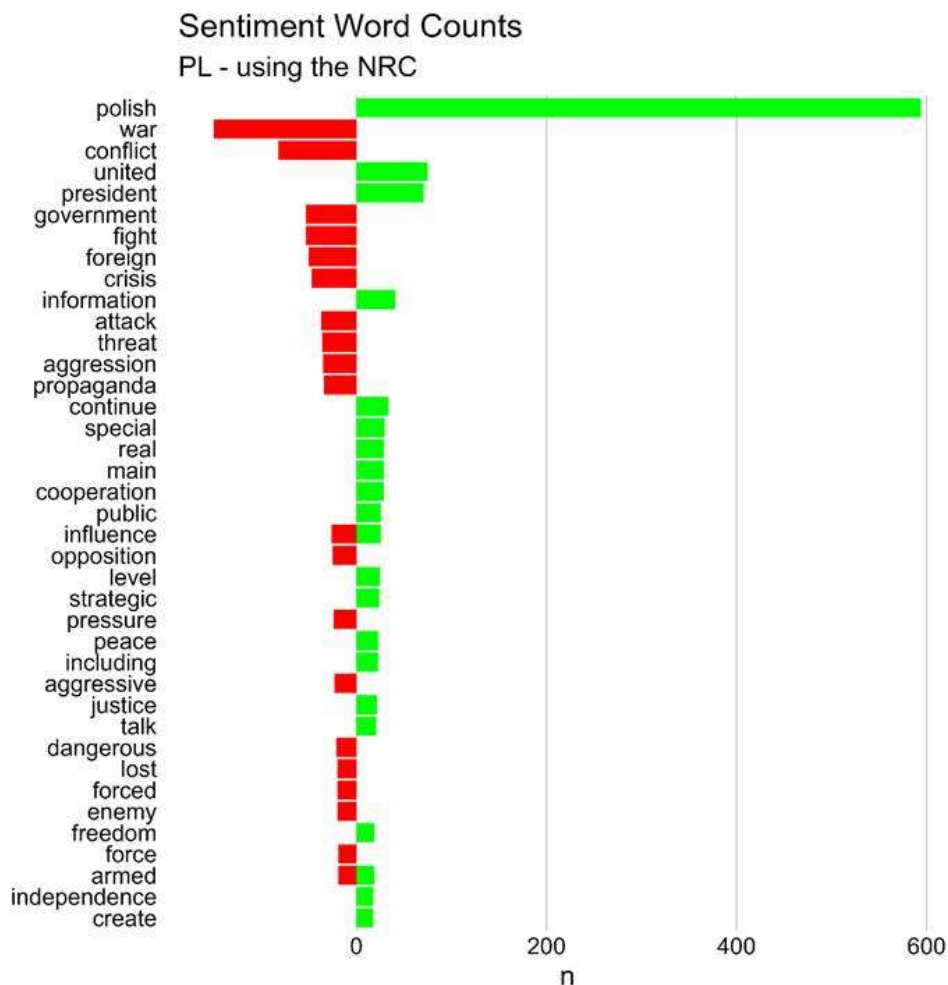


Fig. 1. Sentiment of the most frequently used words in disinformation messages (2016-2023, NRC dictionary, the EUvsDisinfo database)

This analysis shows that pro-Russian disinformation messages in Polish media are heavily focused on negative content, which may be aimed at creating an atmosphere of fear and distrust. Positive sentiments may be used to create contrast or a manipulative positive background.

In terms of emotions, the most common are “trust” (1,681), “fear” (1,675), and “anger” (1,248). Less frequent emotions include “anticipation”, “sadness”, “joy”, “disgust”, and “surprise”.

The analysis of the frequency distribution of emotions (Table 1) revealed a pronounced asymmetry: the three most common emotions accounted for 4,604 mentions (59.4% of the total), while the remaining five emotions had 3,143 mentions (40.6%). Welch’s t-test confirmed a statistically significant difference between the group means: the top-3 emotions ($M = 1,534.67$) significantly exceeded the others ($M = 628.60$), $t(3.87) = 5.225$, $p = 0.007$. The effect size, measured by Cohen’s d , was 3.963, indicating a large practical effect. The

Mann–Whitney U test also confirmed the statistical significance of the differences ($W = 15$, $p = 0.018$). Pearson’s χ^2 test rejected the assumption of a uniform distribution of emotions ($\chi^2 = 1913.5$, $df = 7$, $p < 2.2e-16$).

The obtained results indicate a statistically significant and practically important dominance of three key emotions (trust, fear, anger) in disinformation messages. The exceptionally large effect size ($d = 3.963$) points to substantial practical relevance for understanding the emotional mechanisms of disinformation.

Co-occurrence analysis (Table 2) revealed a high level of synchronization: all three emotions appeared simultaneously in 57.4% of messages (429 cases), which significantly exceeded the expected frequency of random co-occurrence. Additional combinations included “fear–trust” without “anger” (11.4%), “trust” only (10.8%), and “fear–anger” without “trust” (9.9%). Correlation analysis demonstrated a strong positive relationship between “trust” and negative emotions, with correlation coefficients reaching $r = 0.89$ during peak years (2019–2021), which contradicts the traditional understanding of “trust” as the opposite of negative emotions.

Table 2

Table of co-occurrence of the triad of emotions in disinformation

Fear (>0)	Emotions		Number of messages	% of messages
	Anger (>0)	Trust (>0)		
Yes	Yes	Yes	429	57,4
Yes	No	Yes	85	11,4
No	No	Yes	81	10,8
Yes	Yes	No	74	9,9
No	Yes	Yes	33	4,4
No	No	No	19	2,5
Yes	No	No	16	2,1
No	Yes	No	10	1,3

The chi-squared test confirmed the uneven distribution of different emotion combinations in the messages ($p < 2.2e-16$), allowing the rejection of the assumption of randomness. This indicates the strategic use of certain emotion combinations, namely, the simultaneous use of fear, anger, and trust, to achieve a stronger emotional impact on the audience.

The full triad (fear–anger–trust) is in 57.4% of messages, representing an absolute majority and significantly exceeding any other combinations. The dominance of the full triad indicates a strategic orchestration of emotions, where their combination creates a qualitatively new effect.

“Trust” is present in 79.6% of all messages, making it the most common emotion in the sample. Particularly notable is the combination of “trust without fear and anger” (10.8%), which is five times more frequent

than “fear without trust and anger” (2.1%). This confirms the role of trust as an “emotional anchor” that legitimizes even manipulative content.

The low percentage of messages without any of the three emotions (2.5%) demonstrates that the triad functions as an integrative mechanism. Each emotion performs a specific “bridging” function: “fear” creates a sense of threat, “anger” mobilizes action, and “trust” ensures acceptance of the narrative. The presence of diverse emotional configurations indicates adaptation to different contexts and target audiences.

Thus, these research findings highlight the need to consider emotion combinations to understand the mechanisms of disinformation and to develop effective counter-strategies.

4.2. Structural analysis: emotions as semantic bridges

Network analysis revealed that the three emotions – fear, anger, and trust – occupy central positions and function as “bridges” between thematic clusters (Fig. 2). This is confirmed by high betweenness centrality (CB) and closeness centrality (CC) scores. Four modular classes were identified in the network: 1) political discourse and democratic activity, 2) diplomatic relations and strategic defense, 3) humanitarian crisis and conflict resolution, and 4) presidential leadership and national unit.

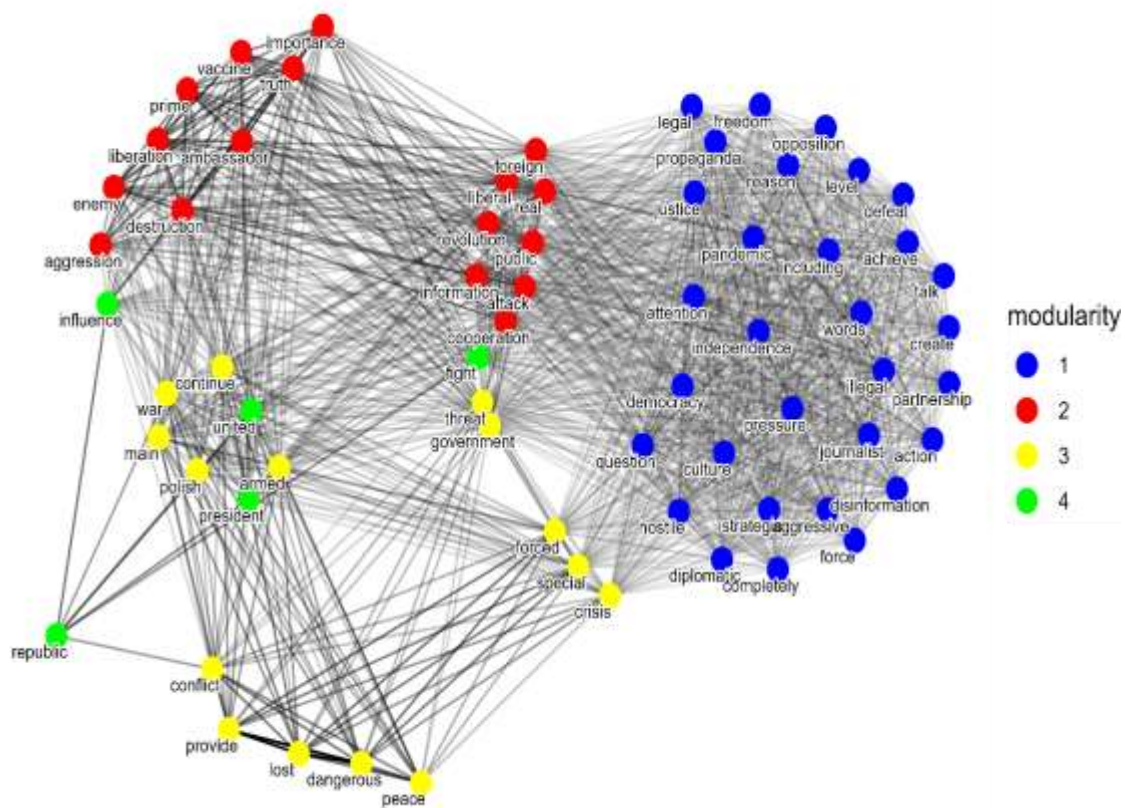


Fig. 2. Sentiment and emotion network in disinformation messages (2016–2023) by modularity class

The triad of emotions ensures the shortest paths between clusters (high CB/CC), indicating its integrative role in the circulation of disinformation content. In the “presidential leadership” cluster, the highest betweenness and closeness centrality scores are held by lexical intermediaries between themes and emotions: “threat” (CB = 71, CC = 0.090; primarily associated with fear and anger), “president” (CB = 67, CC = 0.086; associated with trust), “government” (CB = 53, CC = 0.090), and “aggression” (CB = 58, CC = 0.082). The presence of both “threat/aggression” and “president/government” among the top terms demonstrates the network’s ability to combine negatively charged meanings with legitimizing vocabulary, forming cross-cutting pathways between clusters.

Distinct emotional patterns are clearly observed within the thematic clusters (Table 3):

- 1) political discourse and democratic activity: such high-frequency words as “opposition” and “propaganda” are accompanied by anger, while “justice” and “level” are associated with trust;
- 2) diplomatic relations and strategic defense: “ambassador” and “truth” (trust) coexist with “enemy”, “aggression”, and “attack” (anger/fear);
- 3) humanitarian crisis and conflict resolution: “conflict”, “dangerous”, and “forced” (fear/anger/sadness) appear alongside “peace” and “provide” (trust/anticipation/joy);
- 4) presidential leadership and national unity: such key terms as “republic”, “united”, and “president” are linked to trust and anticipation, while “struggle” and “influence” are accompanied by fear and anger.

Table 3
Key concepts in individual clusters with emotion distribution,
sorted by TF-IDF value¹

Modularity classes/words	Sentiments	Emotions	Group variables	tf_idf	n
Modularity class - 1 (Political Discourse and Democratic Engagement)					
opposition	negative	anger	2021	0.212	16
propaganda	negative		2021	0.212	16
justice	positive	trust	2021	0.212	14
pressure	negative		2021	0.212	14
level	positive	trust	2021	0.212	13
democracy	positive		2021	0.212	12
including	positive		2021	0.212	12
aggressive	negative	anger, fear	2021	0.212	11
talk	positive		2021	0.212	11
attention	positive		2021	0.212	10
Modularity class - 2 (Diplomatic Relations and Strategic Defense)					
ambassador	positive	trust	20	0.887	10
enemy	negative	anger, disgust, fear	2020	0.887	10
vaccine	positive		2020	0.887	10
destruction	negative	anger	2020	0.887	8
truth	positive	trust	2020	0.887	8
importance	positive	anticipation	2020	0.887	7
liberation	positive	anticipation, joy, surprise	2020	0.887	7

prime	positive		2020	0.887	7
aggression	negative	anger, fear	2020	0.592	14
attack	negative	anger, fear	2020	0.478	14
Modularity class - 3 (Humanitarian Crisis and Conflict Resolution)					
lost	negative	sadness	2023	1,386	8
dangerous	negative	fear	2023	1,386	7
provide	positive	trust	2023	1,386	7
peace	positive	anticipation, joy, trust	2022	1,214	7
forced	negative	fear	2023	0.693	7
peace	positive	anticipation, joy, trust	2023	0.693	7
conflict	negative	anger, fear, sadness	2023	0.675	37
special	positive	joy	2023	0.647	7
armed	negative, positive	anger, fear	2022	0.539	8
main	positive		2023	0.499	9
Modularity class - 4 (Presidential Leadership and National Unity)					
republic	negative		2019	2,140	7
united	positive	trust	2019	0.505	17
influence	negative, positive		2019	0.446	10
president	positive	trust	2019	0.372	12
fight	negative	anger, fear	2019	0.357	7
president	positive	trust	2020	0.296	23
influence	negative, positive		2020	0.296	16
fight	negative	anger, fear	2020	0.296	14
united	positive	trust	2023	0.270	14
president	positive	trust	2022	0.246	7

Such coexistence of “threat ↔ legitimization” within the same modular fields is an empirical indicator of semantic bridges, i.e., stable connections between threat-related and trust-related lexemes.

Temporal snapshots show consistent co-variation: peaks in trust coincide with peaks in fear and anger. Between 2019 and 2021, the correlation between “trust” and the combined emotions of “fear + anger” reached 0.89. This indicates an asymmetric role of trust – an “anchor” that legitimizes negatively marked narratives rather than an opposite to negative emotions.

In the network, this effect materializes in the spatial proximity of trust-related lexicon (“president”, “unity”, “cooperation”) to threat-related lexicon (“threat”, “aggression”, “enemies”), enabling the transfer of

credibility from reliable sources to alarming content. Such nodes with high betweenness centrality (CB) serve as transitions between positive and negative emotional subgraphs.

The dynamics show clear peaks in 2019–2021, coinciding with domestic political events and accompanied by a surge in all three emotions. In 2020, there was a sharp increase in trust (+96% compared to 2019), and in 2021, synchronous peaks in fear (+60%), anger (+63%), and trust (+51%) with a shift toward the political cluster. In 2022–2023, intensity declined, but there was a thematic shift toward the humanitarian cluster while maintaining the triad’s proportions. This indicates responsiveness to events and adaptive reconfiguration of “bridges” between clusters.

4.3. Thematic integration: “bridges” between semantic clusters

The analysis of the summary Table 4 (Appendix) made it possible to identify critical patterns in the interaction between the triad of emotions and thematic clusters of disinformation content during 2016–2023, providing empirical answers to the set research questions.

First and foremost, about the synergistic effect of the emotional triad. The data show an uneven dynamic of the triad, which reached its peak intensity in 2021: “trust” (619), “fear” (572), “anger” (457). Compared to the initial figures in 2016 (trust – 1, fear – 2, anger – 3), there is exponential growth that far exceeds a simple proportional increase in the number of messages. In 2021, with 220 messages, the average intensity of the triad was 549 mentions per emotion, whereas in 2019, with 114 messages, it was only 167 mentions per emotion. This indicates a strategic concentration of emotional impact rather than merely an increase in content volume.

“Trust” shows consistent dominance throughout the entire period, surpassing “fear” and “anger” in every year except 2023, when “fear” (395) exceeded “trust” (300). Particularly illustrative is the ratio of “trust” to negative emotions during peak years: in 2020, “trust” (409) compared to “fear” (358) and “anger” (281); in 2021, “trust” (619) compared to “fear” (572) and “anger” (457). This asymmetry confirms the function of “trust” as a stabilizing element that legitimizes negative emotional content by creating a sense of credibility of sources.

What does the integrative function of semantic bridges look like? Thematic clusters display a specific dynamic that correlates with the intensity of the triad of emotions. In 2016–2018, no thematic cluster was active, which coincides with minimal levels of the triad. The first cluster, “Presidential Leadership and National Unity”, appears in 2019 (1 mention), simultaneously with a sharp rise in the triad. In 2020–2021, when the triad reaches its peak, the clusters “Diplomatic Relations and Strategic Defense” and “Humanitarian Crisis

and Conflict Resolution” become active. This suggests that the triad of emotions should function as a necessary condition to activate complex thematic narratives, ensuring their semantic integration.

Temporal analysis revealed two types of emotional adaptation to political events. Reactive adaptation is observed in 2019 (parliamentary elections), marked by a sharp increase in all components of the triad: “trust” rose from 6 to 209, “fear” from 4 to 172, and “anger” from 3 to 120. Proactive adaptation is recorded in 2021 during the confrontation with the EU and the migration crisis, when “trust” reached its peak (619), and “fear” (572) and “anger” (457) also showed peak values, indicating a preemptive mobilization of emotional resources.

A critical shift in the balance of the triad of emotions occurred in 2023 during the parliamentary elections: “fear” (395), for the first time in the entire period, exceeded “trust” (300), which may indicate a strategic shift from legitimization through trust to mobilization through fear in a situation of threatened political control.

The highest activity of the triad coincides with key domestic political events in Poland: the 2019 parliamentary elections, the 2020 presidential elections and the Constitutional Tribunal’s decision, and the 2021 confrontation with the EU. The decline in activity in 2022 (during the reception of Ukrainian refugees) may point to the limited effectiveness of traditional disinformation narratives in the context of a humanitarian crisis, which required an adaptation of influence strategies.

5. Discussions and Conclusion

5.1. Rethinking the emotional architecture of disinformation through the prism of the triad

The results of this study show the strategic use of emotional combinations in pro-Russian disinformation campaigns targeting Poland, which goes far beyond the traditional understanding of emotional manipulation. Key empirical evidence points to the formation of an integrated “triad of emotions” (fear–anger–trust), which functions as a systemic tool of influence rather than a set of independent emotional appeals.

Synergetic nature of the triad of emotions (RQ1)

Regarding the first research question on rethinking emotional dominance through the concept of the triad, the empirical data demonstrate a qualitatively new level of complexity compared to traditional frequency-based approaches. The statistically significant dominance of the three key emotions ($t(3.87) = 5.225$, $p = 0.007$, Cohen's $d = 3.963$) indicates not merely their quantitative prevalence, but their structural integration into a unified system of influence.

The critical finding is the simultaneous presence of the full triad in 57.4% of messages, with “trust” appearing in 79.6% of cases overall. This pattern radically differs from models that predict the dominance of individual negative emotions (Chuai & Zhao, 2020). Instead of the traditional logic of “either fear or anger,” a strategic combination of “both fear and anger and trust” is observed, creating a synergistic effect that is unattainable through the isolated use of emotions.

The triad concept helps explain the paradox of disinformation’s high effectiveness even in the presence of factual rebuttals. When emotions operate systemically rather than individually, they create a cognitive-emotional field in which rational verification becomes subordinate to affective processing. This fundamentally shifts the understanding of emotional dominance from a quantitative phenomenon to a qualitative one – as a form of cognitive control through emotional architecture.

Asymmetric role of trust as a cognitive anchor (RQ2)

The second research question, concerning the asymmetric use of “trust”, received the most unexpected empirical support. Instead of the anticipated antagonistic interaction between “trust” and negative emotions, a high correlation was found ($r = 0.89$) during peak activity periods in 2019–2021. This result radically redefines the role of positive emotions in manipulative narratives.

“Trust” functions not as an alternative to negative emotions, but as an “emotional anchor” that provides cognitive stability for perceiving alarming content as credible. The mechanism operates through the transfer of authority from reliable symbols (national leadership, traditional institutions) to controversial claims about international relations or security threats. When the audience trusts the source, “fear” and “anger” are interpreted as justified responses to real dangers.

The dynamics of 2020–2021 are particularly illustrative, with peak levels of “trust” (619) accompanied by maximum indicators of “fear” (572) and “anger” (457). This pattern empirically confirms the function of “trust” as a moderator that does not neutralize negative emotions but legitimizes them by creating a pseudo-rational basis for accepting manipulative narratives.

A critical shift occurred in 2023, when “fear” (395) for the first time exceeded “trust” (300). This may signal a strategic adaptation from legitimization through trust to direct mobilization through threat in a context of political instability, indicating the tactical flexibility of emotional architectures in disinformation.

Semantic bridges and thematic integration (RQ3)

The third research question, concerning the function of “semantic bridges,” received compelling support through network analysis. The triad of emotions occupies central positions within the network structure, with high betweenness centrality scores ($CB > 60$ for key emotional lexemes) and closeness centrality ($CC > 0.08$), empirically confirming its role in the circulation of disinformation content across thematic clusters.

A critical mechanism is the spatial proximity within the network structure between trust-related lexemes

(“president,” “unity,” “cooperation”) and threat-related lexemes (“threat,” “aggression,” “enemies”). This configuration provides cognitive pathways for integrating oppositely charged narratives through shared affective patterns.

The coexistence of oppositely marked concepts within the same modular classes is particularly illustrative, eg., “ambassador/truth” (trust) alongside “enemy/aggression” (fear/anger) within the cluster of diplomatic relations. This creates emotional coherence between thematically diverse narratives, allowing the audience to perceive fragmented information as a unified interpretive system.

The function of semantic bridges is manifested through: emotional coherence between themes (similar affective patterns create perceived logical consistency), hierarchical emotional structuring (trust legitimizes negative reactions), dynamic emotional anchoring (sequential associations form stable interpretive schemas). It results in the creation of unified worldviews from heterogeneous information through emotional rather than logical integration.

Temporal adaptation and strategic targeting (RQ4)

The fourth research question, concerning temporal adaptation patterns, revealed two fundamentally different types of emotional strategies. Reactive adaptation is observed in 2019, with a synchronous rise in all components of the triad in response to the parliamentary elections: “trust” increased from 6 to 209 (+3383%), “fear” from 4 to 172 (+4200%), “anger” from 3 to 120 (+3900%). Such synchronicity indicates the rapid mobilization of emotional resources in response to political events.

Proactive adaptation is recorded in 2021, during the confrontation with the EU and the migration crisis, when “trust” reached an absolute peak (619), and “fear” (572) and “anger” (457) also showed their highest values. This configuration indicates a preemptive preparation of the cognitive-emotional field for the reception of crisis narratives, characteristic of strategic rather than merely tactical planning in disinformation operations.

A critical insight is the correlation of emotional activity peaks with domestic rather than external events. The highest intensity of the triad coincides with the 2019–2020 elections and the constitutional crisis of 2020–2021, while the period of the war in Ukraine (2022–2023) is marked by a decline in activity. This confirms the opportunistic nature of hybrid information operations, which adapt to local vulnerabilities in the political system.

Temporal dynamics also reveal thematic shifts: in 2020–2021, the dominant cluster is “Presidential Leadership and National Unity”, while in 2022–2023, there is a transition to the cluster “Humanitarian Crisis and Conflict Resolution”, with the core proportions of the triad remaining intact. This demonstrates the adaptive reconfiguration of semantic bridges between clusters depending on the political context.

5.1. Comparison with previous studies

These results expand upon the findings of Martel et al. (2020) and Chuai & Zhao (2020) regarding the influence of individual emotions on the spread of disinformation, demonstrating the synergistic effects of their strategic combination. While previous studies focused on the dominance of anger as a catalyst for the viral dissemination of fake news, our data point to a more nuanced architecture, where trust moderates the intensity of negative emotions, facilitating their acceptance by the audience.

The concept of the “cognitive-emotional field” aligns with the theoretical propositions of Ecker et al. (2022) regarding emotional drivers of disinformation perception, but it offers a structural mechanism for their interaction. Unlike models that view emotions as a destabilizing factor in rational thinking, our approach demonstrates how their systematic use creates pseudo-rational foundations for the acceptance of manipulative narratives.

Temporal analysis reveals patterns that contradict commonly held assumptions about the reactive nature of disinformation campaigns. The exponential growth in emotional intensity during 2019–2021, which coincides with domestic political crises rather than external threats (such as the war in Ukraine), confirms the opportunistic nature of hybrid information operations that adapt to local vulnerabilities in the political system.

5.1. Study limitations

A key limitation is the use of English-language annotations instead of full Polish-language texts, which may have led to the loss of culturally specific emotional nuances and stylistic features. Although the NRC Word-Emotion Association Lexicon provides a standardized approach to emotion analysis, its application to translated short summaries may not fully capture the emotional complexity of the original materials.

A methodological limitation lies in the focus on the triad of three emotions, with relative neglect of other emotional categories (anticipation, sadness, joy, disgust), which could reveal additional patterns of manipulation. Furthermore, the network analysis is based on static snapshots, failing to account for the dynamic evolution of semantic connections over extended periods.

Sampling limitations stem from the exclusive focus on EUvsDisinfo materials, which represent only identified and debunked cases of disinformation. This may introduce systematic bias in favor of more obvious or technically simpler manipulative strategies to detect.

5.2. Theoretical contribution

This study makes a fundamental contribution to understanding the emotional mechanisms of disinformation by conceptualizing the “triad of emotions” as a systemic tool of manipulation. A key theoretical achievement is the demonstration of the synergistic nature of emotional combinations, which produce qualitatively new effects compared to the isolated use of individual emotions.

The empirical confirmation of the asymmetric role of trust as an “emotional anchor” redefines the traditional view of positive emotions as a protective factor against manipulation. Trust emerges not as an antidote, but as a catalyst for emotional manipulation, with critical implications for both the theory and practice of information security.

The concept of “semantic bridges” offers a mechanism for integrating fragmented narratives into coherent worldview systems through emotional rather than logical consistency. This expands our understanding of how disinformation achieves internal coherence despite factual contradictions.

The identification of reactive and proactive strategies of emotional adaptation illustrates the sophistication of modern disinformation operations, which not only respond to current events but also shape the cognitive-emotional field for future information perception. This underscores the need to reconceptualize disinformation as a strategic, rather than merely tactical, phenomenon within the context of hybrid warfare.

5.3. Further research directions and practical implications

A primary avenue for further research is the expansion of analysis to full authentic texts in local languages, utilizing multilingual emotion lexicons and involving experts in cultural linguistics. This would enable validation of the triad of emotions concept across diverse cultural contexts and reveal specific adaptations of manipulative strategies.

Promising directions include the study of dynamic network structures using temporal graphs to track the evolution of semantic bridges and their adaptation to shifts in the political context. The integration of socio-psychological experiments could confirm the causal mechanisms through which the triad of emotions influences cognitive-emotional information processing.

The practical implications include the development of early warning systems for disinformation campaigns based on the detection of characteristic emotional patterns. Monitoring algorithms tuned to identify the asymmetric use of trust in combination with negative emotions may offer more effective identification of

manipulative content compared to traditional fact-checking methods.

To build resilience against disinformation, it is advisable to design educational programs that focus on recognizing the emotional architectures of manipulation rather than solely on fact verification. Understanding how trust is used to legitimize alarming content can significantly enhance media literacy in the context of hybrid information threats.

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Dynamics of disinformation content by year: messages, key events, and emotional-thematic structure (2016-2023)

Years	Number of messages	Events (most important socio-political events in the country during the year)	Emotions (emotions of pro-Russian disinformation news)								Modularity class (topics of pro-Russian news)			
			trust	fear	anger	anticipation	sadness	joy	disgust	surprise	1. Political Discourse and Democratic Engagement	2. Diplomatic Relations and Strategic Defense	3. Humanitarian Crisis and Conflict Resolution	4. Presidential Leadership and National Unity
2016	4	Black protests against the abortion ban	1	2	3	2	2	1	1	1	0	0	0	0
2017	12	Judicial reform	9	15	6	7	5	4	6	0	0	0	0	0
2018	3	Act on the Institute of National Remembrance (Holocaust)	6	4	3	2	1	0	1	1	0	0	0	0
2019	114	Parliamentary elections – victory for PiS	209	172	120	78	72	56	42	48	0	0	0	1
2020	200	Presidential election – re-election of Duda / Constitutional Tribunal ruling on abortion	409	358	281	231	157	120	109	87	0	1	0	1
2021	220	Confrontation with the European Union (national law versus EU law) / migration crisis on the border with Belarus	619	572	457	331	27	186	186	144	1	0	0	0
2022	57	Admission of refugees from Ukraine	128	157	118	80	85	54	46	35	0	0	1	1

2023	135	Parliamentary elections – victory for the opposition	300	395	260	184	199	114	108	80	0	0	1	1
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THE NEW INSTITUTIONAL AND POLITICAL (DIS)BALANCES RESULTING FROM THE DISSOLUTION OF THE NATIONAL ASSEMBLY ON JUNE 9, 2024

ABSTRACT: *Since the dissolution of 9 June 2024, France's political and legal system has undergone a new configuration. On the one hand, the tripolarisation of the National Assembly and the establishment of two minority governments are encouraging a permanent search for balance and maintaining a political disorder that has already been present in the Assembly since the re-election of Emmanuel Macron. But, on the other hand, the constitutional means available to the institutions are fully operational. However, within the executive dyarchy they reveal the obvious weakening of the President of the Republic and the predominance of the Prime Minister, who is a full player in a monist parliamentary system.*

KEYWORDS: Constitution; France; Fifth Republic; dissolution; motion of censure; President of the Republic; Prime Minister; National Assembly.

1. Introduction

The relationship between Parliament and the executive in France since 1958 has largely been to the advantage of the executive, whose predominance was legally organized by the constituent assembly and, in practice, has turned into a presidentialization of the regime from the election of the President of the Republic by direct universal suffrage.

Therefore, this relationship is, on the surface, relatively simple and, in most cases, corresponds to a coexistence/alignment of the presidential and parliamentary majorities. Specifically, the elections that designate the President of the Republic and those that renew the National Assembly have so far mostly produced a similar result. Consequently, Parliament, and in particular the National Assembly, is in a subordinate position to the executive branch, and especially to the President of the Republic. This has been accentuated since the constitutional revision of 2000 and the alignment of the presidential term of office with that of the deputies: five years, with concurrent elections.

In this configuration, the Fifth Republic's regime corresponds to a system of collaborative powers, or a parliamentary system, defined by a flexible separation of powers. The legislative and executive branches are separate but collaborate; they possess reciprocal means of dismantlement. Parliament can be dissolved by the

government, and the government is politically accountable to Parliament. This is precisely what the constitutional law of June 3, 1958, stipulated.

Furthermore, the majority voting system, adopted for both the election of members of parliament and the President of the Republic from 1962 onwards, creates a structuring configuration that inevitably leads, from the perspective of political parties, to a bipolarization of political life. This is a situation in which only two of the existing governing parties have a chance of forming the government and alternate in power more or less regularly, with the winning party forming the government and the losing party constituting the opposition.

But changes have occurred. A first variant has gradually emerged: a dualist parliamentary system (as opposed to a monist parliamentary system) characterized by the active role of the Head of State and the dual responsibility of the government, both to the Head of State and to Parliament. This, however, is not an institutional novelty. Indeed, while the drafters of the 1958 Constitution did not necessarily foresee this possibility, it is, on the one hand, a configuration already known in French constitutional history under the July Monarchy (1830-1848), and, on the other hand, the 1958 Constitution encouraged this natural tendency by giving primacy to the executive branch, and particularly to the President of the Republic. By stating that "A constitution is a spirit, institutions, and a practice" in his speech of January 31, 1964, Charles de Gaulle, then President of the French Republic, offered a definition that transcended the purely legal framework to encompass a reality that was simultaneously ideological, structural, and pragmatic. It lays the foundations of French presidentialism, while maintaining the parliamentary nature of the regime, which places the President at the center of state power and, consequently, the Prime Minister as a transmission belt between the President and Parliament, or, more precisely, the National Assembly, before which alone he exercises his responsibility.

So, if we put all these elements together, the Fifth Republic regime corresponds to a regime of preponderance of executive power over legislative power with a Head of State particularly endowed with competencies.

The second variant, however, appeared with what has been called cohabitation.

This configuration has occurred three times:

- 1986-1988: President of the Republic: François Mitterrand, Prime Minister: Jacques Chirac;
- 1993-1995: President of the Republic: François Mitterrand, Prime Minister: Edouard Balladur;
- 1997-2002: President of the Republic: Jacques Chirac, Prime Minister: Lionel Jospin.

It is defined as the coexistence of a President of the Republic and a political majority opposed to him in the National Assembly. Within this framework, the dual nature of the executive branch becomes fully apparent, since the Head of State, elected by direct universal suffrage, loses his role as head of the executive

branch to the Prime Minister, who is accountable to the National Assembly. The head of government thus becomes the dominant figure in the executive branch and the true leader of the parliamentary majority.

It constitutes a complex and controversial political phenomenon (for a non-exhaustive selection, see the bibliography). Some commentators consider it a sign of the flexibility of French institutions, sometimes presidential in nature, sometimes parliamentary. Others, on the contrary, consider it a perversion of institutions that could lead to a harmful diarchy at the top of the state between the President of the Republic and the Prime Minister.

An interpretation of the Constitution that favours the preeminence of the President of the Republic within the institutions undoubtedly precludes such a political configuration. Cohabitation can, in fact, only occur if the presidential majority is rejected in the legislative elections. Gaullist institutional practice argues in such cases for the resignation of the Head of State, since his responsibility is thus directly called into question by the people. However, this was not the decision of President François Mitterrand in 1986 and 1993, nor that of President Jacques Chirac in 1997. Cohabitation, long considered improbable, thus became frequent at the end of the 20th century: between 1986 and 2002, it lasted, cumulatively, nine years.

Without going into further detail, it should be noted that the third period of cohabitation differed from the two previous ones. These occurred without the electoral deadlines being altered by a decision of the Head of State. Furthermore, the duration of the first two periods of cohabitation and the third differed. Those that affected the end of President François Mitterrand's two seven-year terms lasted only two years. The third period of cohabitation, on the other hand, lasted an entire legislative term, or five years. The Head of State, who had not dissolved Parliament upon his election in 1995, decided to do so in 1997 in order to secure a parliamentary majority aligned with his views for the final five years of his term. The failure of the presidential majority in these elections resulted in a particularly long period of cohabitation. At the same time, the President's political responsibility was directly engaged by his decision to alter the electoral calendar by calling an early legislative election. This situation confirmed that the classic legal division between executive and legislative branches was overlaid by a more political division based on the existence of two opposing blocs: the majority bloc and the minority bloc (or opposition). This had already been the case since 1962, and it was fully confirmed during periods of cohabitation.

The Constitution has therefore adapted and been fully applied during periods of cohabitation and, a fortiori, during periods of coexistence of majorities.

Obviously, these variations, and especially the latter, necessitated a more political than legal approach, as there is an inevitable overlap between the powers of the two heads of the executive branch. This is because the drafters of the Constitution initially opted for a parliamentary system (see the Constitutional Law of June

3, 1958), but with a restoration of the President of the Republic's powers within the executive duarchy. However, depending on the circumstances—coexistence or cohabitation—as well as the influence and nature of the politicians in charge, the distribution of powers within the executive branch will favor either the President or the Prime Minister. It is essential to examine the spirit and practice of the Fifth Republic to understand the functioning and evolution of its institutions.

This is what will need to be experienced again with the third variant that emerged on June 9, 2024, and the subsequent elections. Indeed, the situation resulting from the dissolution of June 9, 2024, is unprecedented in many respects, both politically, with the origins and results of the legislative elections that followed, and with regard to the constitutional text. While this leap into the unknown may appear risky to some, the constitutional provisions include mechanisms and safeguards whose activation has already had an impact or will undoubtedly shape future political and legal developments.

2. A new chaotic political configuration

The unexpected activation of Article 12 of the Constitution has numerous consequences. Among these, the political dimension is of particular interest. Indeed, the new configuration of the National Assembly resulting from the legislative elections reveals a political landscape that the President may not have foreseen: a three-way split with a government enjoying only a minority of support. But before discussing this aspect, it is necessary to consider the very notion of dissolution. A rare phenomenon since 1958, the dissolution of June 9, 2024, is based on rather curious considerations in more ways than one, exacerbating the chaos it was intended to quell.

A – The origin: a singular dissolution

Faced with the poor results obtained by the presidential camp in the European elections (almost 17 points separated the National Rally (31.3%) from the presidential majority (14.6%)), amounting to a real electoral slap in the face, the President of the Republic had several options. First, he could have refrained from acting. Indeed, the results of the European elections are consistent with the two previous elections, 2019 and 2014: in 2014, the National Front obtained 24.86% of the vote and 23 seats, while the then-presidential party, the Socialist Party, garnered 13.98% of the vote for 13 seats; in 2019, the National Rally again came out on top with 23.34%, 22 seats, compared to Renaissance/MoDem with 22.42% of the vote and 21 seats. The National Rally is thus gaining a foothold within the European Parliament, but it is true that in 2024, distrust, even rejection, of the presidential camp became clearly evident. That said, no European election had ever before led the French authorities to draw any conclusions whatsoever.

But President Macron decided otherwise. Without venturing into speculation about his motivations, it is possible to suggest that, faced with the ordeal of the end of his term, marked by a relative majority in the National Assembly and growing disarray within its ranks, the President sought a fresh impetus. In doing so, the idea of appealing to the people could have taken shape through the activation of either the referendum under Article 11 on a flagship bill or Article 12 concerning dissolution. The latter carries a greater risk because, depending on the results, the absence of a presidential majority could jeopardize the President's mandate. Indeed, by invoking the "fever" and "disorder" that had spread through the National Assembly and wishing to give the French people "the choice of our parliamentary future," the dissolution was declared on June 9, 2024, barely after the results of the European elections were known. In doing so, the President believed that the results of the European elections had created the conditions for a crisis. The surprise lies in the speed of this decision, made immediately after the results were announced, and in the organization of legislative elections within the shortest possible timeframe permitted by the Constitution (Article 12, paragraph 2: "General elections shall be held no less than twenty days and no more than forty days after the dissolution of Parliament"). This is explained by the proximity of the Bastille Day celebrations and the Olympic Games, leading to a brief campaign with the first round on June 30 and the final results on July 7.

Dissolution is a power that does not require countersignature and whose implementation conditions are minimal. The only requirement is consultation with the presidents of both assemblies and the Prime Minister, which takes the form of a simple notification.

Each dissolution serves a specific purpose, making them difficult to categorize. The 1962 dissolution followed the overthrow of the government and was fully in line with the mechanisms of rationalized parliamentarism; the 1968 dissolution was a response to the events of May 1968. As for the dissolutions of 1981 and 1988, their objective was to restore a majority coalition while the deputies' terms were still incomplete and a newly elected President of the Republic wished to rely on the same parliamentary majority that had brought him to power. The 1997 dissolution is often described as a "British-style" or "convenient" dissolution, but it exemplifies a failed attempt, resulting in the third period of cohabitation.

The dissolution of parliament in 2024 came at a time when the President, following the 2022 legislative elections, held only a relative majority. This led to greater uncertainty, with the possibility of a coalition or a new form of cohabitation. Furthermore, it occurred at a time when the President was ineligible to run for re-election, unlike in 1986, 1997, or even 1993, since President Mitterrand could legally have sought a third term because the previous version of the Constitution did not limit the number of consecutive terms. Indeed, since the 2008 revision, the President can only serve two consecutive terms. Moreover, much like in 1997, the President did not manage to regain a majority, but this defeat followed his losses in the European elections and even in the 2022 legislative elections, which had failed to secure a majority. Consequently, the

President appeared weakened, and all the elements were in place for a chaotic end to his five-year term.

B – The unforeseen consequence: the lack of a majority

Previous dissolutions had led to clear results, with the exception of 1988, when the presidential majority obtained only a relative majority (275/575). For the other dissolutions, and even though the 1997 dissolution did not produce the expected results for the presidential majority, which led to a cohabitation government (absolute majority of 319/577 for the left-wing coalition versus 262/577 for the outgoing majority, which had held 483 seats before the dissolution), the results were unequivocal and ensured an absolute majority in the National Assembly for the presidential group.

The situation resulting from the 2024 dissolution is unprecedented. Three blocs (the top three) stand out, none of which holds an absolute majority:

- New Popular Front (NFP): 193/577
- Presidential Coalition: 166/577
- National Rally (RN) and Union of the Right for the Republic: 142/577
- The Republican Right (LR): 47/577
- Freedoms, Independents, Overseas and Territories (LIOT): 21/577

As mentioned, depending on whether or not the presidential and parliamentary majorities coincide, the parliamentary system in place is either dualist or monist. In a dualist system, the President chooses the Prime Minister and imposes their policies. The Prime Minister is subordinate to the President and is not accountable to the National Assembly. In a monist system, the President must endorse the voters' choices and appoint a Prime Minister who enjoys the confidence of the National Assembly. In the current scenario, there is no absolute or relative majority; only a "governing minority" remains, according to Professor Lascombe (2024: 16). The existence of a minority government was not new, as it had existed since 2022 with the Borne government under the presidency of Emmanuel Macron, and in the past with the Rocard government from 1988 to 1991, albeit on a smaller scale. Furthermore, dissenting members emerged within the majority group itself, challenging the Prime Minister and even the President. This was the case under the Barre government between 1976 and 1981 and under the Valls government between 2014 and 2016, weakening the adoption of certain texts.

This situation inevitably bred instability. Chronologically, starting with the results of July 7th, this instability manifested itself within the National Assembly. The 17th legislature thus presented three blocs,

two of which were coalitions: the New Popular Front and the presidential bloc; the National Rally, to which we must add the Union of the Right for the Republic, remained the most homogeneous. Indeed, within each bloc, parliamentary groups were being reconstituted, thus reshaping the bloc's balance. The example of the New Popular Front illustrates this, and over time, disagreements multiplied: homogeneity in voting on texts, particularly the motion of censure of December 4, 2024; the Socialist Party's negotiations with the Bayrou government and the NPF's refusal to support the vote on the motion of censure following the general policy speech. Eleven groups were therefore created. This reflects the heterogeneous and unstable situation of political power relations within the Assembly and the constant search for balance by each of the actors, government, groups or deputies.

It has short-term and medium-term consequences, with the long term a matter of divination. In the short term, the appointment of the various bodies of the National Assembly during the month of July 2024 was marked by negotiations and agreements detrimental to the image projected to voters. The appointment of the Speaker of the National Assembly is a prime example. His role is crucial, as he directs debates, enforces the rules of procedure, and maintains discipline. He receives bills presented by the government, as well as bills proposed by members of parliament, refers them to the relevant committees, and decides on the admissibility of amendments tabled on texts examined in plenary session. The Speaker, the metronome of the Assembly's operations, convenes and chairs, on the one hand, the Conference of Presidents, which meets weekly to determine the Assembly's agenda, and on the other hand, the meetings of the Bureau, which has general authority over the organization and internal functioning of the institution. Finally, the President of the National Assembly presides over the Congress and, as the fourth-highest-ranking official in the State, represents the National Assembly, particularly abroad. After three rounds of voting, Yaël Braun-Pivet won with 220 votes against her two opponents (André Chassaigne with 207 votes and Sébastien Chenu with 141 votes), thanks to the various carryovers from previous rounds. This election speaks volumes about the French political landscape, in which the President of the Assembly would have to act as an arbiter between the different blocs and demonstrate considerable diplomatic skill. The Bureau, for its part, must, according to Article 22 of the National Assembly's rules of procedure, strive "to reflect the political makeup of the Assembly." This would not be the case, since, through a series of obstructions, agreements, and so-called tactical maneuvers, the National Rally (RN) was not to be represented on the Bureau despite the number of its members.

The initial clashes in July foreshadowed those of the parliamentary session. In the medium term, therefore, following the censure of the Barnier government, whose appointment took 51 days and which came from the smallest group within the "governing minority," the search for a non-censure pact was central

to the formation of the Bayrou government, both before its appointment and up until its general policy speech. In both cases, it was necessary for the President of the Republic to choose a Prime Minister who could unite the center and the center-right while avoiding alienating the extremes. Normally, in countries where the coalition government system is practiced, political parties are the primary actors in the process. However, in France, under Article 8 of the Constitution, the President has the discretion to choose the appointment timeframe (he is not bound by any obligation) and the individual. The choice is based on the person and a few broad policy directions, rather than on a genuine government programme negotiated among the coalition parties. Prime Minister Bayrou seemed to have embarked on this path without any prospect of its long-term viability. That said, he only needed to ensure the stability of his minority majority and remained accountable to the National Assembly. The monistic approach seemed to prevail at the time, since, while the President of the Republic appoints the Prime Minister, the latter is no longer directly responsible to him. By seeking a non-censorship pact, the Prime Minister was turning only to members of parliament who, by approving this agreement, would commit to not censuring the current government and to seeking compromises. However, this "agreement" (despite the borrowing from legal terminology) had no legal force but was purely political; it depended solely on the will of the political groups, could not last for the duration of the legislative term, and was contingent on public opinion.

Finally, as several studies show, including that of Yann Algan, Thomas Renault, and Hugo Subtil, the National Assembly, far from being pacified by the dissolution as the President of the Republic had announced, transformed into a "spectacle-assembly addressing a new audience: social media. It is no longer a question of rational debate and convincing other members of parliament, but of stirring up the emotions of followers on these networks" (2025: 3). This has only intensified since July 2024. Based on the analysis of speeches, the Assembly, despite the tripartite division, is highly polarized, with anger and emotions dominating the debates. This parliamentary fervour and theatrical dimension are not new. What is new is the audience to which the speeches are addressed: the voter-followers. The Assembly is no longer the place for calming conflicts between citizens through political parties and groups by means of rational speeches and constructed contradictory exchanges; it is becoming the place for increasingly short, Manichean interventions with a unilateral aim, provoking interruptions, reminders of rules, and reactions in the form of applause or protests.

This situation does not inspire optimism regarding the search for compromise, which is nevertheless necessary in a space where division has replaced bipolarity. This observation is partly a consequence of the decline of political parties, particularly since 2017, and the fragmentation of the political landscape, compounded by the perceived ineffectiveness of the majority voting system, which has produced results similar to those obtained with proportional representation. All these factors raise concerns about a drift similar to

that experienced by the Third (104 governments from 1871 to 1940) and Fourth Republics (22 governments between 1947 and 1958), with a risk of ministerial instability. However, the 1958 Constitution provides institutional safeguards, namely those of rationalized parliamentarism (Articles 12, 49, and 50). It is precisely in the DNA of the Fifth Republic to have instruments that allow the regime to be preserved from excessive instability.

3. An expected application of constitutional safeguards

While the political situation is chaotic and difficult to predict, the legal framework is clear. The Constitution provides for a parliamentary system and the necessary instruments for its operation, assuming a rationalized parliamentarism. These legal elements remain unchanged; it is their application by political actors that is in question, even if all the articles of the Constitution concerning dissolution, the appointment of the Prime Minister, and the management of current affairs by a caretaker government have been properly implemented.

However, this is an unprecedented situation under the Fifth Republic: a minority government forced to seek ad-hoc majorities. Furthermore, the Prime Minister's position, as in a period of cohabitation, is enhanced while that of the Head of State tends to diminish. Indeed, while several legal instruments enshrined in the Constitution are difficult for the Prime Minister to implement—such as the use of ordinances under Article 38, which requires an enabling act that may not be passed—those relating to the President are almost entirely beyond his reach.

A – The predominance of the Prime Minister

The institutional sequence we are witnessing, which can be described as a monist parliamentary system, places the government and its Prime Minister at the forefront, since their accountability can only be invoked before Parliament. This is partly confirmed by the time it took for Michel Barnier to be appointed after the legislative election results (51 days). François Bayrou was appointed quickly after the resignation of the previous government (8 days), but his government took 10 days to form, whereas, for the 45 previous governments of the Fifth Republic, the average time to announce the formation of a government had been 2 days. This necessarily implies negotiations between different individuals, with the choice currently resting on the government's ability to avoid censure and to find favour, at least temporarily, with each opposition bloc and the various minority groups supporting the government. This presents a rather unflattering image of the institutions in the eyes of the public, but it is in no way contrary to the Constitution. Indeed, Article 8, paragraph 1, states that "the President of the Republic appoints the Prime Minister," and paragraph 2 specifies that "On the Prime Minister's proposal, he appoints the other members of the Government and terminates

their functions." No timeframe is mentioned for either appointment or resignation. This time is all the more necessary given that, in the event of a vote of no confidence, dissolution cannot occur for at least one year. It is therefore essential to choose a Prime Minister and ministers who will not alienate the opposition blocs and who will be capable of governing. This clearly demonstrates that the government is accountable only to the National Assembly.

Thus, as long as the alliance between the blocs hostile to the government does not reach an absolute majority to dismiss it, the government can govern, provided that its minority bloc supports it and does not disintegrate. Two constitutional provisions attest to this.

On the one hand, the Prime Minister is not required to prove that they have a majority. Article 49, paragraph 1 of the Constitution does not provide for an investiture procedure for assuming office, and practice has generally favoured the Prime Minister's freedom, even though at the beginning of the Fifth Republic, the application of paragraph 1 was subject to contrasting interpretations (Gicquel, J. and Gicquel, J.E., 2017: 653-656). Furthermore, it does not stipulate any time limit for the government's responsibility to be invoked, and the government is formed upon its appointment. It therefore falls solely to the members of Parliament to prove that the government lacks a majority by implementing a spontaneous motion of censure (Article 49, paragraph 2).

On the other hand, Article 49, paragraph 3 of the Constitution can ensure the stability of a government, even a minority one, when the ordinary means of passing legislation have proven ineffective. Generally, this rationalization tool proves very effective when faced with either a recalcitrant majority or one or more combative oppositions. The government then ties its fate to that of a specific piece of legislation.

According to the provisions of paragraph 3, the Prime Minister may, after deliberation by the Council of Ministers, commit the Government's responsibility on the vote of a draft finance bill, a draft social security financing bill, or any other bill or proposed law under debate in the National Assembly. Discussion of the bill is immediately suspended, and the text is considered adopted without being put to a vote, unless a motion of censure is tabled within 24 hours.

The motion of censure must be passed under very specific conditions: only votes in favour of the motion are counted, and it can only be adopted by a majority of the members of the Assembly. If the motion of censure is adopted, the text is rejected and the Government falls.

Since the constitutional reform of July 23, 2008, with the exception of finance bills or social security financing bills, Article 49, paragraph 3 of the Constitution can only be used on a single bill during a single parliamentary session. Previously, the government could use it as often as it wished and on any bill.

From 1958 until Emmanuel Macron's re-election, Article 49, paragraph 3, was used 112 times, and

23 times from 2022 onwards by Elisabeth Borne when she only had a relative majority. The use of Article 49, paragraph 3 of the Constitution has varied since 1958. It was infrequent at the beginning of the Fifth Republic, but more widely used by certain governments that had only a very narrow majority in the National Assembly, such as Michel Rocard between 1988 and 1991 (28 times).

Furthermore, contrary to its original purpose, the procedure has been used to allow for the completion of the examination of texts on which too many amendments had been tabled and to counter the practice of parliamentary obstruction. Since the constitutional revision of July 23, 2008, the number of parliamentary injunctions per session has been limited due to the new conditions outlined above.

Specifically, for the first time since 1962, Prime Minister Michel Barnier, after invoking Article 49, paragraph 3 of the Constitution to pass the 2025 social security financing bill, resigned following the adoption of the motion of censure on December 4, 2024. The opposition coalition brought down his government. While this led to an unprecedented political situation (yet again), the constitutional mechanisms were fully functioning. Having resigned the next day, the government, like that of Gabriel Attal, was handling day-to-day affairs pending its official replacement. The implementation of this "traditional principle of public law" and not of the text of the Constitution was accomplished: "the resigning Government retains competence, until the President of the Republic has provided by an official decision for its replacement, to proceed with the handling of current affairs" (CE, Ass. 19 October 1962, Brocas, Rec. 553).

But if the government resigned, the budgetary and financial emergency remained: the 2025 budget bill would not be definitively adopted by Parliament within a timeframe compatible with its promulgation before the start of the following fiscal year. Furthermore, neither the Constitution nor the organic law on budget laws (LOLF) explicitly stipulates the procedure to be followed if a government is ousted on a timeline that prevents it from completing the parliamentary review of the budget bill for a given year before the start of that year.

But the Government would take advantage of Article 47, paragraph 4 of the Constitution and Article 45 of the Organic Law on Budget Laws (LOLF). These articles stipulate that the Government must submit, before December 19 of the year preceding the start of the fiscal year, to the National Assembly, a special bill authorizing it to continue collecting existing taxes until the budget law for that year is passed. This exceptional legislative procedure aimed to guarantee the financing of public spending and the continued operation of public services from January 1 until the adoption of the budget law and the law for financing Social Security for 2025. This situation had arisen twice before, in 1962 under Georges Pompidou and in 1979 under Raymond Barre.

In such a case, Article 45 of the Organic Law on Budget Laws (LOLF) allows the new Prime Minister,

or the incumbent, Mr. Barnier, who resigned (in the capacity of managing current affairs), as Georges Pompidou had done in the autumn of 1962, to submit, before December 19, a special budget bill enabling the collection of existing taxes, with expenditures authorized by decrees of the Prime Minister, based on the voted appropriations (renewal of payment appropriations for the 2024 fiscal year). Naturally, such a bill was adopted, within a few days, as was the case in December 1979, under entirely different circumstances, by Parliament, in order to ensure the continuity of national life. The Constitutional Council (decision no. 79-111 DC of December 30, 1979, Law authorizing the Government to continue to collect existing taxes and duties in 1980) had specified in 1979 that "it is clearly the responsibility of Parliament and the Government, within the sphere of their respective powers, to take all the necessary financial measures to ensure the continuity of national life; that they must, in order to do so, take inspiration from the rules provided for, in the event of late filing of the draft finance law, by the Constitution and by the ordinance constituting organic law, with regard to both resources and the allocation of credits and authorizations relating to the services voted on."

However, most of the new tax measures would have to wait for the 2025 Finance Act, the date and conditions of whose adoption (whether or not a new Article 49, paragraph 3 would be introduced) were not yet known at the time. In 1979, after the Finance Act was struck down by the Constitutional Council, the special law (Law No. 79-1159 of December 30, 1979) was quickly followed by the 1980 Finance Act (Law No. 80-30 of January 18, 1980).

These new institutional and political developments, resulting from the dissolution, demonstrate that the Prime Minister not only plays a central role but also has numerous legal and, in particular, constitutional instruments at their disposal that they can and/or must use. The situation of the President of the Republic is quite different.

B – The weakening of the President of the Republic

As Georges Vedel pointed out, "if the law says 'what must be done,' it cannot say 'what will be done with it'" (Vedel, 1989: 27). While the Prime Minister and members of parliament have made and will continue to make use of many of the provisions authorized by the Constitution, the President of the Republic, although possessing his own powers, appears very constrained in their use because he is dependent on the political environment. In dealing with the government, he has no other power than to appoint and accept the resignation of the Prime Minister (Article 8). He did indeed apply this, but it is an obligation to act (the present indicative) and we have seen how constrained his choice was.

In relation to Parliament, the President has the right to address the Assembly and the right to dissolve

it. In the first case, it is difficult to see what a written or oral message to Congress would contain, what demands or announcements would be made, and above all, what he could achieve amid a divided Assembly that fails to provide him with a majority for action. In the second case, according to the Constitution, the President of the Republic cannot dissolve the National Assembly during the interim presidency (Article 7, paragraph 4), when extraordinary powers are invoked (Article 16), and, according to Article 12, when a previous dissolution occurred less than a year prior. This timeframe means that from the moment the President calls upon the electorate, he commits in advance to respecting its verdict. The question remains, however, when this dissolution could take place.

The legislative elections were held on June 30, 2024 (first round) and July 7, 2024 (second round). Should the term "the following year" be calculated from the date of the dissolution decree, i.e., June 9, of the first or second round? Should the next dissolution therefore take place on June 10, 2025, July 1, 2025, or July 8, 2025? There is no precedent, and the question remains unresolved in law. The Constitutional Council has refused to recognize its jurisdiction to hear appeals against the decree dissolving the National Assembly issued by the President of the Republic pursuant to Article 12 of the Constitution. It confirms its previous decisions (decisions no. 88-4 ELEC of June 4, 1988, no. 88-1040/1054 AN of July 13, 1988, no. 97-14 ELEC of July 10, 1997). In 2024, it recalled that its assigned competence, strictly defined by the Constitution, does not allow it to hear disputes directed against such an act of the Head of State, which differs in particular from the preparatory acts for the election for which it has admitted, on an exceptional basis, its competence on the basis of article 59 of the Constitution; it also refused to examine a QPC raised in the context of the exceptional control which it exercises, on the basis of article 59 of the Constitution, on requests calling into question the regularity of future elections.

Moreover, considering that the decree of dissolution is a prerogative of the President of the Republic, exercised without countersignature, and given the wording of Article 12 ("A new dissolution may not take place within one year of these elections"), the second round of elections must be taken into account, as it constitutes the end point from which the count begins. Therefore, the following dissolution could not occur until after July 8, 2025. However, taking into account that the ordinary session of Parliament ends on the last working day of June and that the election must take place at least twenty days and at most forty days after the dissolution, the legislative elections could be held no earlier than Sunday, August 3 (first round) and Sunday, August 17 (second round). That said, the campaign would be brief and would fall during the French summer holidays. It was therefore highly likely that the elections would take place after the summer break. It was also possible to imagine that the dissolution would only take place after the holidays, with elections then being organized right in the middle of the back-to-school season. So far, the President of the Republic has not resorted to another dissolution, but anything is possible.

Before the nation, the President of the Republic can resort to a referendum under Article 11 and to the emergency powers of Article 16. Article 16 will not be considered, as it is unlikely that the conditions set forth in the constitutional text would be met. Article 11 corresponds to the manifestation of national sovereignty and presents itself as an exceptional procedure for the adoption of laws by citizens. While the decision to hold a referendum rests with the President, the initiative lies with the Government during parliamentary sessions or with members of Parliament. Consequently, assuming the executive branch takes the initiative, the first condition is that both heads of the executive branch must agree. The second condition must fall within the areas of application defined by the Constitution: the organization of public powers, reforms relating to the nation's economic, social, or environmental policy and the public services that contribute to it, and the authorization to ratify a treaty. Immigration, proportional representation, end-of-life issues, the role of screens in youth politics, and enshrining environmental protection in the Constitution are among the topics being considered for a multi-question referendum or several referendums. For now, while President Emmanuel Macron stated his intention to give the French people a voice in his New Year's address for 2025, nothing has been finalized.

Therefore, when analyzing the President's options for action and ultimately his very existence, he appears particularly powerless. Furthermore, the area of his reserved domain (foreign affairs and defense) sheds no more light on the matter, as international issues revolve around the United States, President Trump, and the consequences of his election on various regional conflicts and the renewal of international relations under his leadership.

However, the issue of the President of the Republic's voluntary resignation or impeachment places him squarely at the center of political concerns. Voluntary resignation is regularly invoked to trigger an early presidential election. While the President states his intention to complete his term (especially since he is ineligible to run again), the opposition blocs, led by the NPF and RN, as well as certain prominent figures (François Hollande, Nicolas Dupont-Aignan, Charles de Courson, Jean-François Copé, etc.), regularly exert pressure. Furthermore, according to an Odoxa-Backbone Consulting poll for Le Figaro dated January 3, 2025, six out of ten French people supported his resignation.

That said, would this have been a viable way out of the aforementioned crisis? From a political standpoint, the prospect of a presidential election following the President's resignation before July 8, 2025 would have been unsatisfactory for the parties involved. Indeed, within the minority camp, which supported the government, there were too many potential presidential candidates, making it too soon. And within the opposition, while candidates had clearly declared their intentions, one side was preoccupied with a legal case, while the other was experiencing significant internal turmoil, with a rebellion among some of its members.

The political timing did not seem opportune, especially since the process of gathering endorsements is expedited in such circumstances to limit the interim period. Nevertheless, in the event of a widespread deadlock in the various governments by the National Assembly, or following another dissolution that would result in a massive rejection by voters, maintaining the President in office would prove difficult. Moreover, the political situation could be identical: the composition of the National Assembly will remain and the possibility of the new elected President not having an absolute majority cannot be ruled out.

The second way in which the president can resign is through impeachment. Article 68 of the Constitution is the counterpart to Article 67, which protects the office and its holder from third parties: "The President of the Republic is not responsible for acts performed in that capacity." Article 68 thus protects the presidential office from its holder himself: "The President of the Republic may only be impeached in the event of a breach of duty manifestly incompatible with the exercise of his mandate." The triggering event is an attack on the dignity of the office through conduct by the President unrelated to his official duties: an act stemming from his private life (scandal) or public life (commission of an offense, violation of the Constitution). Impeachment can be pronounced following a vote by a two-thirds majority of the members of each house, and then by both houses meeting as the High Court. The High Court is presided over by the Speaker of the National Assembly and decides, by secret ballot, on the impeachment within one month. The conditions are identical for the different votes: a qualified majority of two-thirds, a ban on proxy voting, and a count of only votes in favour of convening the High Court or impeachment; abstentions are considered votes against. This procedure is therefore complex to implement. As proof, the impeachment attempt launched by LFI (La France insoumise) deputies was rejected by the National Assembly's Law Committee on October 2, 2025, by 54 votes to 15.

The President of the Republic retains the power of appointment, notably that of the Prime Minister. He nevertheless maintains the ability to speak to the media, but given the decline in his popularity, his voice no longer carries weight.

In conclusion, and to echo Charles de Gaulle's words in his press conference of January 31, 1964, "a Constitution is a spirit, institutions, and a practice." While the "institutions" and their powers are still very much present in the Constitution, the reference to the "spirit" was based on the "need to ensure that the public authorities possess the efficiency, stability, and accountability that they organically lacked under the Third and Fourth Republics." Clearly, however, the spirit has vanished. Undoubtedly, the five-year presidential term, the reversal of the legislative and presidential election calendars, the limitation to two consecutive presidential terms, and even the evolving expectations of the French people have eroded the "spirit" that prevailed in 1964 and led to the current situation. Both the text and the spirit of the text have been modified

and remain undeniably tied to political circumstances dependent on the actors involved. Undoubtedly, the parliamentary nature of the regime is confirmed, the Constitution provides the means to address the current political difficulties, and there is no constitutional deadlock. However, the new institutional and political balances, or imbalances, undeniably affect the stability of the regime and thus raise questions about its future. Will the Constitution demonstrate the same flexibility as during periods of cohabitation, without succumbing to a regime crisis, and will it allow the Fifth Republic to navigate this new legal and political phase? Time will tell, but it is hopeful that democratic principles will prevail.

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EXECUTION OF SENTENCES FOR CONVICTED WOMEN - MOTHERS WITH CHILDREN: A COMPARATIVE ANALYSIS OF SLOVAKIA, CZECHIA AND ITALY

ABSTRACT: *The topicality of the choice of the article is proven by the annual increase in the number of imprisoned women in the world, which is especially highlighted by international organizations dealing with the protection of human rights. They point out the identified reasons for this increase and at the same time address the existing conditions provided by the state to imprisoned women. In general, one of the biggest problems is that prisons often do not provide the appropriate conditions required by gender diversity or specificity. And consequently, they often do not meet specific requirements at all for a very sensitive group of prisoners, namely imprisoned women – mothers. The aim of this article is to expand the knowledge base on the issue of imprisoned women – mothers, based on a comparison and to examine the solutions to this issue in the conditions of selected countries. The authors analyse and compare the conditions and legislation in three different European Union states: The Slovak Republic, the Czech Republic and the Italian Republic. The conclusions are based on the obtained results of a comparative study, the processing of which helped to reveal differences in the implementation of the addressed issue in the environment of selected countries. Finally, the authors consider de lege ferenda possible solutions in the Slovak Republic.*

KEYWORDS: execution of sentence; convicted woman – mother; imprisonment; prison.

1. Introduction

In recent years, the discourse surrounding criminal justice reform has increasingly acknowledged the necessity of a gender-sensitive approach to incarceration (Basalo García, 2017; Fair, Walmsley, 2022). This shift stems from the recognition that traditional penal systems, historically designed around male inmates, often fail to account for the specific needs and circumstances of female prisoners, particularly those who are mothers (Abasgulyeva, Misenheimer, Ram, Tromboo, Wan Tsoi, 2024). Women in conflict with the law frequently enter the criminal justice system from vulnerable positions, often shaped by poverty, histories of abuse, mental health issues, and primary caregiving responsibilities. When these women are incarcerated, the consequences extend beyond the individual, directly affecting their children and families.

Nowhere is this more apparent than in the context of mothers of minor children who are serving prison sentences. A significant proportion of incarcerated women are primary caregivers, and their imprisonment can lead to disruptions in the child's emotional development, education, and sense of security. In some jurisdictions, the law provides for the possibility of children living with their mothers in specially designated prison wards. This model aims to preserve the maternal bond and minimize the negative impact of maternal incarceration on early childhood development. However, it also raises critical legal and ethical questions.

At the core of this issue lies a tension between two sets of rights and interests. On the one hand, the mother's right to family life and her role as a caregiver; on the other hand, the child's right to a safe, stimulating, and developmentally appropriate environment. This tension poses a challenge for lawmakers and correctional systems, who must navigate between the goals of punishment, rehabilitation, and child protection. The legitimacy and practicality of raising children in a prison environment have come under scrutiny, prompting debate over whether specialized mother-child prison wards are a humane and appropriate solution or rather a last-resort compromise.

2. Objective and methodology

This article seeks to contribute to that debate by providing a comparative legal analysis of the execution of prison sentences for mothers with minor children in three different jurisdictions - the Slovak Republic, the Czech Republic, and the Italian Republic, with a specific focus on two models:

- a) imprisonment without children, where the child is placed in external care, and
- b) imprisonment with children, in specially designated and specialized prison wards.

The analysis will examine the relevant legal framework, practical implementation, and compliance with international human rights standards. Based on an analysis of Slovak legislation related to the issue in question and a comparison of European practice, the authors address the thesis that the currently functioning Slovak prison system effectively balances human rights and focuses on the needs of imprisoned mothers and their children. In their conclusions, they consider the merits of possible legislative reforms. Considering this, the authors formulate the following research question: "How do individual countries - Slovakia, Czech Republic and Italy - deal with the execution of sentences for mothers with children and what does this imply for Slovakia?" "Are the conditions of execution of sentences for mothers with children in Slovakia comparable, or rather sufficient in comparison with other countries?"

3. The penitentiary system of the Slovak Republic

The legal framework governing the execution of sentences for convicted women in the Slovak Republic is primarily shaped by the Act No. 300/2005 Coll., the Criminal Code (Criminal Code) and Act No. 301/2005 Coll., the Criminal Procedure Code, as amended (Criminal Procedure Code), as well as specific regulations specifically governing the conditions of imprisonment. The Slovak legal system, like many other European systems, faces the challenge of reconciling the aims of punishment and rehabilitation with the need to protect vulnerable individuals, particularly women who are mothers. This section will explore the key legal provisions governing the imprisonment of mothers.

The criminal and penitentiary system of the Slovak Republic has progressed rapidly in recent years. The amendment to the Criminal Code, which came into effect in August 2024, has brought several changes, such as changes to the thresholds of damages that affect what is considered a criminal offence and what is considered a misdemeanour, reduction of some sentence levels, and shortening of limitation periods, etc. In 2022, the first detention centre was even opened in the Slovak Republic - the Hronovce Detention Centre. However, it appears that the Slovak Republic is only catching up with the trends already established by European states. One of the indicators of this claim is the peculiarities of the execution of prison sentences of convicted pregnant women or convicted mothers with children.

Over recent years, the enforcement part of criminal proceedings has also undergone several changes in legislation, e.g., partial changes in the conditions of detention and execution of sentences, changes in material and technical conditions related to, for example, the reconstruction of penal institutions for the execution of sentences. However, a number of issues remain unresolved in the Slovak Republic, for example as repeatedly raised by the Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) such as the equipment and condition of the penitentiary institutions, the regime and treatment of convicts, etc. (Council of Europe, 2019).

However, in this article we deal with the conditions of imprisonment of mothers with children or pregnant women, under the usual conditions of protected persons, mainly because the Slovak Republic, as one of the European Union member states, has not yet established a special penitentiary institution or only a special section in existing institutions for these persons. In the Slovak Republic, since 1992, there has been one separate facility for imprisoned women: Prison Nitra - Chrenová. Other facilities perform detention within institutions differently for male and female accused persons in sections.

4. Convicted women in general

Penitentiary institutions, colloquially prisons, as a "temporary place to live" are often perceived through a lens set by society in a distorted mirror". However, the preference for respect for the human person, respect for human personhood and the justly defined rights and duties of human beings cannot be ignored even in the environment of detention and imprisonment.

Repressive, educational and, above all, preventive measures on the prison population is a specific feature of the penal environment, in which most prisoners are men. However, in the times in which we live, we are experiencing an increase in female criminality resulting in the imposition of unconditional sentences. The life of children is therefore highly influenced by the fact that their parent is in prison and by the circumstances of the imprisonment, starting from the arrest, followed by sentencing and execution of the sentence (Maruschak, Bronson, Alper, 2021).

According to the report of the General Directorate of the Corps of Prison and Court Guard of the Slovak Republic (CPCG) on the number and composition of the accused and convicted persons in detention facilities and institutions for the execution of sentences of imprisonment, as of 1st May 2025, the number of convicted women in the Slovak Republic totalled 506 (Generálne riaditeľstvo Zboru väzenskej a justičnej stráže, 2025, p. 2).

Despite the fact that women make up a much smaller proportion of the prison population than men, their imprisonment, coupled with their isolation from society, needs a special, more sensitive, but above all more attentive approach by prison staff, particularly in the process of treatment. In relation to the offender, repression in the form of punishment is an effort to ensure that he or she never repeats the offence. In the light of current developments in social life, the growing social acceptance and recognition of women have a negative side, manifested in the various forms of crime committed by women.

Often these are persons who have been repeated victims of domestic violence, whether verbal, physical or sexual, before committing the crime, and as a result often suffer from health and psychological disorders. In the minimum level of protection, the majority of cases are first-time perpetrators of predominantly property crimes such as theft (Maťašovský, 2022, p. 24).

The prison clientele of the institute is largely made up of convicts coming from marginalized groups with weak social ties and a low standard of living. In general, the offenders are mothers of several children who themselves have not been guided towards responsibility, basic social habits and needs, least of all towards obtaining an education, which in turn leads to the commission of crimes of endangering the moral education of youth, neglect of compulsory maintenance and the like (Marešová, 2005, p. 205).

Moreover, in many cases, the mothers are single mothers, as the fathers of the children are either serving sentences or are not involved in the children's maintenance and upbringing. The consequences of such actions have a society-wide adverse impact - the break-up of the family, the loss of natural patterns of behaviour, and the burden on the State's financial system (Maťašovský, 2022, p. 24).

The execution of women's imprisonment is therefore to some extent different from the standard execution of sentenced adult males. In general, the biological, psychological and physiological aspects of convicted women come to the fore in the execution of a sentence and must be taken into account. In this context, we particularly highlight the fact that it is the contact between children and their sentence serving parent that can have a positive impact on the psychological development of the child, the imprisoned parent and the prison environment itself, including society as a whole.

5. Convicted women – mothers with children under 3 years old and pregnant women in the Slovak Republic

In the Slovak Republic, the legal regulation of special categories¹ of convicted persons is enshrined in Section 69 et seq. of Act No. 475/2005 Coll. on the Execution of a Custodial Sentence as amended (the Act 475/2005 Coll.), while this legal regulation also contains only deviations from the general legal regulation of the execution of imprisonment and has the nature of a *lex specialis* in relation to the *lex generalis* of the status and conditions of the execution of imprisonment.

The execution of women's sentences is specifically regulated in Section 74 of the Act 475/2005 Coll. One of the main deviations as opposed to general regulation is that women are granted the right to an accommodation area of at least 4 m². This area may also be reduced for a maximum period of 6 months by decision of the director of the institution. What is not possible, however, is that the accommodation area of the pregnant convicted woman must never be reduced, even if the director of the institution concerned decides so.

For a better overview, we describe the issue in more detail in the subsections below.

a. Convicted mothers with a child under one-year-old and pregnant women

Before we move on to the specifics, we will briefly explain the legal distinction between suspension, deferment, and interruption of sentences.

¹ Special categories are minors, women, foreigners and stateless persons, for whom particular consideration is given to their psychological, physiological, age, ethnic and national characteristics.

A suspended sentence (in Slovak law - Section 49 et seq. of the Criminal code referred to as a “conditional sentence”) arises after the court has imposed a penalty, typically a term of imprisonment, but decides not to enforce it immediately. Instead, the execution of the sentence is conditionally postponed for a probationary period. During this time, the convicted person must comply with specific obligations, such as leading a law-abiding life or fulfilling additional restrictions imposed by the court. If the individual meets these conditions, the sentence is never carried out. However, if they reoffend or breach the imposed obligations, the court may order the execution of the originally suspended sentence. This mechanism reflects a strong emphasis on rehabilitation and the opportunity for offenders—especially first-time or less serious offenders—to avoid incarceration.

By contrast, in case of deferment of a sentence (Section 409 of the Criminal Procedure Code), the court postpones the execution of the sentence itself. Its primary function is to reconcile the enforcement of criminal sanctions with compelling humanitarian, medical, or social considerations that would render the immediate execution of the sentence inappropriate or disproportionate. According to the Slovak law, particular significance is attached to the deferment of a sentence in the case of a pregnant woman. In such circumstances, deferment serves to protect not only the health and dignity of the sentenced individual, but also the interests of the unborn child, which require heightened legal and ethical consideration. The enforcement of a custodial sentence during pregnancy may pose risks to prenatal development, access to adequate healthcare, and the overall well-being of both the mother and the fetus. Consequently, legal systems commonly provide for the postponement of the sentence until a specified period after childbirth, thereby ensuring that the immediate postnatal phase—critical for both maternal recovery and early childcare—is not disrupted by incarceration.

Unlike deferment, which operates prior to the initiation of the sentence, interruption (Section 412 of the Criminal Procedure Code) presupposes that the convicted person has already begun serving the imposed penalty, and that its execution is subsequently suspended for a defined period. The rationale underlying interruption lies in the need to ensure that the enforcement of criminal sanctions remains consistent with principles of human dignity and proportionality. Situations justifying interruption typically include serious illness, urgent medical treatment unavailable within the prison system. During the period of interruption, the obligation to serve the sentence is not extinguished but merely held in abeyance, with the expectation that execution will resume once the relevant impediment ceases to exist.

In the Slovak Republic, according to Section 63(2) of the Act 475/2005 Coll., if a pregnant woman is sentenced to imprisonment in such a case, the execution of her sentence is deferred, specifically until the child is one-year-old, after which she must start to serve the sentence again.

The sub-legislative norm – Section 3(a) of the Decree of the Ministry of Justice of the Slovak Republic No. 368/2008 Coll., which issues the Regulations for the Execution of Imprisonment, considers cases when a

woman does not yet know that she is pregnant or has deliberately concealed the pregnancy. The provision imposes the obligation of compulsory medical examinations when persons are admitted to the prison. The examination must be carried out no later than the next working day following admission. If, during the initial medical examination, the doctor establishes that the convicted woman is pregnant, the institution shall notify the court, which is empowered to decide on the deferment of the sentence, and the public prosecutor who supervises the observance of legality in the institution.

Section 409(3) of the Criminal Procedure Code also deals with the specifics of the execution of sentences of pregnant women and women caring for their own child under one year of age: "*The serving of a prison sentence by a pregnant woman or the mother of a newborn child shall be deferred by the presiding judge for one year after childbirth.*", thus excluding such execution of a prison sentence.

The interruption of the execution of a prison sentence is also dealt with in Section 412(1) of the Criminal Procedure Code, which deals with the optional (mandatory in case of women with child younger than one year) interruption of the execution of a prison sentence: "*If the convicted person, who is serving a prison sentence, develops a serious illness, the presiding judge may interrupt the serving of the sentence for the necessary time; however, the serving of the sentence shall always be interrupted in the case of a pregnant woman or the mother of a child younger than one year.*"

A medical report or proof of the birth of the child shall be submitted as evidence. The mother's application shall be decided by the president of the chamber of the competent court. The mother spends this period at home with the child, but after the expiry of the one-year period she returns to prison and the child is then in the care of other persons, most often the family, or is placed in substitute personal care or in another type of care - perhaps even in an institution for children care.

The question of whether the automatic deferment of custodial sentences imposed on pregnant women until the child reaches one year of age is proportional must be assessed in light of the principles of necessity, humanity, and the best interests of the child. Such a measure pursues a legitimate aim, namely the protection of maternal health, the safeguarding of prenatal development, and the preservation of the early postnatal bond between mother and child. The first year of life constitutes a particularly sensitive developmental period, during which continuous maternal presence is widely regarded as essential for the child's physical, emotional, and psychological well-being.

According to the European Committee for the Prevention of Torture, the paramount consideration in all cases must be the well-being of the child. This principle entails, in particular, that prenatal and postnatal care provided within custodial settings should be equivalent to the standard of care available outside of the institutions. Where infants and young children are accommodated in prison, their situation should be overseen by professionals with expertise in social work and child development. The overall objective should be to create

an environment centred on the needs of the child, minimizing the visible features of detention, such as uniforms or the audible signs of confinement (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2011, p. 92).

The return of the mother to prison after the child reaches one year of age introduces a distinct set of legal and social considerations, particularly concerning the child's development and well-being. The abrupt separation from the primary caregiver at a formative stage may have adverse effects on the child's emotional stability, attachment patterns, and sense of security.

This issue is also addressed in Parliamentary Assembly Recommendation No. 1469 (2000) on Mothers and babies in prison and Parliamentary Assembly Resolution No. 1663 (2009) on Women in Prison. In the first document, the Parliamentary Assembly of the Council of Europe concurs with the view of experts that early separation of a child from its mother causes long-term difficulties for the child, including impaired attachment to others, emotional maladjustment, and personality disorders. It therefore recommends that the Committee of Ministers call on member states to: a) develop and utilize community-based sanctions for mothers of young children and avoid the use of custodial sentences; b) recognize that the imprisonment of pregnant women and mothers of young children should be used only as a last resort for women convicted of the most serious crimes and women who pose a danger to society; c) establish appropriate guidelines for courts to consider imprisonment for pregnant women and nursing mothers only if a serious and violent crime has been committed and the woman poses an ongoing danger.

Social, Health and Family Affairs Committee of Council of Europe reported, that for the very small number of female offenders with infants who must serve a custodial sentence due to the serious nature of their offence and the significant risk they pose to the community, small community-based units should be created that offer high-quality care for their children. These units could be partially managed by prison services and the custodial sentence or remand could be served within the unit. The units should also allow supervised access to the outside world. While the financial cost is expected to be comparable to current arrangements, the human cost would be substantially lower (Social, Health and Family Affairs Committee Council of Europe, 2000).

b. Convicted mothers with a child over one-year-old

In the case of a convicted mother with a child older than one year of age, pursuant to Section 74(4) of the Act 475/2005 Coll., the Minister of Justice of the Slovak Republic is specifically authorized to issue an approval for the establishment of a specialized ward where convicts can have their children with them and take care of them. Such a specialized ward may be established up to 3 years of age, exceptionally up to 5 years of age of the child. However, such an option created by law does not apply if the child is entrusted by the court

to the care of another person.

In most of the European Union countries, such imprisonment of convicted women is common, but in the Slovak Republic it is not yet applied in practice. We discuss this issue in more detail below.

c. Specialized institution - ward

An important document within the Slovak Republic is the so-called Concept of the Prison System of the Slovak Republic for the years 2022 to 2030 (Zbor väzenskej a justičnej stráže, 2022). This document was revised in 2024 (Zbor väzenskej a justičnej stráže, 2024). The purpose and goal of the concept is to create a system of cooperation between the prison system and probation in the Slovak Republic in individual time horizons, at the latest by 2030, in order to create an effective mechanism for the enforcement, execution and control of relevant court decisions.

The long-term vision and the expected state of affairs that the concept seeks to address in the framework of 16 thematically related objectives and their associated measurable tasks monitored in three time bands (short-term until the end of 2023, medium-term until the end of 2026 and long-term until the end of 2030) is to create a socially respected, modern and transparent organisation fulfilling the entire implementation procedure in accordance with European standards and the latest expert knowledge with meaningful content and goal-oriented re-socialisation activities.

The Concept identifies and describes the shortcomings in the Framework Proposal for the solution and in the Conceptual Goals and Tasks section attaches measurable tasks for their fulfilment, in relation to all accused and convicted persons, including special categories, which are also women, or pregnant women and women taking care of their own children under 3 years of age (Vláda Slovenskej republiky, 2024, p. 20).

The concept states that the priority task to be implemented is to build a specialized ward for the execution of imprisonment of mothers with children so that the convicted mother can take care of her child during the imprisonment and there is no traumatic separation of the child, with conditions imitating the home environment 2030 (Zbor väzenskej a justičnej stráže, 2022, pp. 7- 31; Zbor väzenskej a justičnej stráže, 2024, p. 16).

Within the conceptual goals and objectives specifically, it is stated as short-term tasks – *“To build a section for the execution of sentenced mothers with children up to 3 years of age.”* and *“To draft an amendment to the Act on the execution of sentences specifying the conditions for the placement of a child with a mother serving a prison sentence.”* These tasks set out in the concept have not yet been fulfilled.

Currently, the Slovak Republic does not have an actual ward/section of the penal institution for pregnant or convicted mothers with their minor children, as is the case in majority European countries. In the past, there

have been several proposals to create a separate ward for convicted pregnant women or mothers with children, but this has not been successfully completed or approved, despite the fact that the Slovak Republic is one of the last country in Europe which, in addition to such a ward for pregnant women and mothers with children, does not also have a placement committee of a prison for the execution of a prison sentence, which implies that the placement of prisoners is decided by the court.

The issue of building a specialised ward for mothers with children was already raised by the CPT Committee in its report in 2009 in Article 52: "*The CPT Committee wishes to be informed of the detailed plans for a new institute for mothers with children...*" (Council of Europe, 2009, p. 24).

Regarding the legislative and procedural aspects of the placement of mothers with children for the execution of sentences, the last initiative was the drafting of an amendment to the Act on the Execution of Sentences back in 2022. This amendment was to include the substantive and procedural conditions for the placement of convicted women and their minor children in the special sections for the execution of sentences of mothers with children and the regulation of the special conditions for the execution of sentences in those sections of the institutions. As it follows from the Report on the performance of tasks implemented by the concept of the government of the Slovak republic for the years 2022 to 2030 – Report for the year 2022, on 8 November 2022 the amendment was discussed by the Legislative Council of the Government of the Slovak Republic, which suspended the discussion and recommended the submitter to complete the amendment in connection with the major amendment to the Criminal Code mentioned at the beginning of this article (Zbor väzenskej a justičnej stráže, 2023, p. 6). Ergo, no substantive or procedural measures have been taken so far.

Thus, the Slovak Republic is still looking for a "solution" that would help to mitigate the consequences if a mother is sentenced to an unconditional prison sentence. There have been a number of proposals, either by setting up a specialised ward for mothers with children, where a woman could care for her child up to the age of 3 as a rule, or exceptionally up to the age of 5 if the child could not be entrusted by the court to the care of another person (Vláda Slovenskej republiky, 2019, pp. 20-21; Vláda Slovenskej republiky, 2024, pp. 19-21).

6. Global trends and comparison of Slovak legislation with selected countries

The protection of the rights of convicts (prisoners), including women, is the subject of normative regulation contained in several international documents. The core of legislative national regulation and the boundaries that flow from international treaties and Union law have therefore member states of the European Union to some extent similar, if not identical. The starting documents are mainly:

The United Nations Standard Minimum Rules for the Treatment of Prisoners in the form of recommendations to all United Nations Member States.¹ This document sets out minimum standards governing the use of instruments that restrict personal liberty in prisons. It can therefore be stated that the document in question contains and lays down universal rules for the execution of imprisonment, regardless of any local specificities. The Standard Minimum Rules for the Treatment of Prisoners did not however draw sufficient attention to women's particular needs. Recognizing the need to provide global standards with regard to the distinct considerations that should apply to women prisoners and offenders UN or rather member states adopted in December 2010 so called Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders called also the Bangkok Rules. Bangkok Rules are also focusing on needs of imprisoned women and their children.

The Charter of Fundamental Rights is the European Union's bill of human rights. Its 50 articles bring together the rights and freedoms belonging to everyone in the European Union. General provisions in the Charter set out its detailed interpretation and application. Member States have a duty to respect and observe the Charter when acting within European Union law. The European Convention drafted the Charter in 1999. The European Parliament proclaimed it a year later. The Charter came into full legal effect with the Treaty of Lisbon on December 1, 2009 (European Agency for fundamental rights, 2021).

The European Prison Rules are a revised version of the United Nations Standard Minimum Rules, updated to reflect European traditions, cultural values and new prison strategies. A key aspect in the European Prison Rules is the preservation and respect for the human dignity of prisoners. The European Prison Rules were last updated in 2020. There is also synergy with above mentioned international standards, as the United Nations Nelson Mandela Rules on the treatment of people in prison drew on the earlier European Prison Rules, and the 2020 revision has in turn been able to draw on those Rules, and the 2010 'Bangkok Rules' on the treatment of women in prison. The European Prison Rules therefore provide a framework for prison authorities that is compliant with human rights and up to date with international developments (Pental Reform International, 2021, p. 3).

In the light of the above, it can be stated that there are no general or specific data or estimates within the European Union on the number of pregnant women in prison or the number of children born in prison in the European Union or outside it. One reason why figures are not accurately recorded is, for example, the United Nations Rules for the Treatment of Prisoners and Non-custodial Measures for Women Offenders, which support non-custodial sanctions for pregnant women.

¹ The United Nations Standard Minimum Rules for the Treatment of Prisoners were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955. They were approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31st July 1957 and 2076 (LXII) of 13th May 1977.

In the European Union, there are generally specific rules for pregnant women, depending on the individual country. It follows that there is no specific legislation that deals in detail with pregnant mothers and therefore each country has its own specific legislation. Below, we will take as an example and compare the legislation of the Czech Republic and the Italian Republic.

7. Imprisonment of women - mothers in the Czech Republic

The Czech legislation on the subject is in many respects similar to Slovak legislation, but with deviations. The biggest deviation is that the imprisonment of mothers with minor children is permitted in the Czech Republic. We will examine these peculiarities below.

The execution of imprisonment is regulated, as in Slovakia, by several laws - not only at the national level but also at the European level. Since we have approached the international or European level above, we will only deal with the national level.

Like other laws, the laws regulating the prison system are based on the Constitution of the Czech Republic. The provisions of the Czech Constitution are largely similar to those Slovakia. The most important acts regulating the execution of prison sentences include Act No. 169/1999 Coll., on the execution of prison sentences and on amendments to certain related regulations (the Act 169/1999 Coll.). The fourth chapter addresses specific groups of convicts - juveniles, permanently unemployable individuals, persons with mental and behavioural disorders, foreigners and, most importantly, convicted women and mothers of minor children. The Decree No. 345/1999 Coll. of the Ministry of Justice, which issues the Rules for the Execution of Imprisonment (the Decree 345/1999 Coll.), is also an important document as it regulates the specifics and special conditions to the execution itself.

The Act 169/1999 Coll., in force since 1st January 2000, regulates the execution of women's sentences in Sections 66, 67 and 68. In essence, however, it refers only to specific categories of women who are exclusively affected by these regulations. Section 66 deals specifically with restrictions on the imposition of disciplinary sentences on pregnant women and Section 67 concerns the execution of sentences on mothers of minor children. Finally, Section 68 deals with the possibility of extending the period of suspension of sentence execution within a calendar year for mothers of minor children.

The Act 169/1999 Coll., and subsequently the Decree 345/1999 Coll., consider mothers with children to be a specific category of convicts, as is the case in Slovak Republic. We shall highlight the Czech differences from the standard imprisonment:

In today's Decree 345/1999 Coll., the execution of women's sentences is regulated in Sections 89, 90 and 91. The current Rules for the Execution contains only one difference and novelty from earlier versions of

the same norms. It provides for the permission to wear one's own clothing and shoes during non-working hours for female convicts assigned to a supervised prison and for the permission to wear such clothing during visiting hours for female convicts in a supervised and maximum security prison. Admittedly, all the legislative changes throughout the years that have affected women's sentencing have certainly contributed to a logical "softening" of the overall impact of the prison environment on incarcerated women.

Only milder forms of disciplinary punishment (reprimand, forfeiture of property, deprivation of benefits resulting from previous disciplinary awards) may be imposed on pregnant women and women whose child-birth has not been more than 6 months.

In exceptional cases and under the conditions laid down by law, a convicted woman may be permitted to keep and care for her child while serving her sentence, as a rule until the child is 3 years old. Such women are permitted to wear their own clothing and footwear at their discretion.

a. Světlá nad Sázavou Prison

The prison in Světlá nad Sázavou in the Czech Republic, opened in year 2000 and with capacity to almost 1,000 female inmates, is the largest prison in Czech Republic where only women are placed. Women currently serve their sentences there and are assigned to low, medium and high security prisons, as well as to high security prisons. However, there are also several specialised wards dedicated to specific groups of women prisoners. Among them is a ward for mothers with children (Vězenská služba České republiky Věznice Světlá nad Sázavou, 2025).

Světlá nad Sázavou Prison is the only prison in the Czech Republic with a specialised section for the execution of sentences of mothers of minor children from one to three years of age since 2002, and section for the execution of custody of mothers with a minor child up to one year of age and, as 2004, a section for convicted mothers of minor children up to one year of age (Vězenská služba České republiky Věznice Světlá nad Sázavou, 2025).

According to the provisions of Section 67(2) of the Act 169/1999 Coll.: *"...a convicted woman may, in cases worthy of special consideration, if such a procedure is permitted by the conditions in the prison and the personality of the convicted woman, be allowed, at her request, to have her child with her and to care for it during the execution of the sentence, as a rule until the age of 3, unless such child has been entrusted by the court to the care of another person. Before making such a decision, the prison director shall request an assessment by a doctor and psychologist and the child welfare authority as to whether such a procedure is in the best interests of the child."*

It follows from the above that a mother who wishes to be placed in prison with her child must submit

her own application. This is addressed to the prison director and registered upon her admission to the prison. On the basis of the application, the convict is sent an information letter with the relevant annexes - the child's social history, the child's medical history and a statement from the convict's general practitioner, which the applicant must subsequently submit, completed by the competent authorities. The convicted person is also required to provide a copy of the child's birth certificate, a notification of receipt of State social assistance benefits (award of parental allowance), which, if accepted, would cover the convicted person's stay in prison and the needs of her child.

In the case of minors who have both parents on their birth certificates, the father's consent is required for the child to be placed with the mother in a specialised section. The mother receives basic information from the information letter sent by the social worker of the prison.

We emphasize that the woman enters one of the reception prisons without her child. Section 67(2) of the Act 169/1999 Coll. states that "*...a child may not be entrusted by the court to the care of another person.*" It is clear from this provision that if a child is entrusted by the court, for example, to foster care, this could be one of the grounds for rejecting the application. Until the applicant is escorted from the reception prison to Světlá nad Sázavou and her application is decided, she must arrange for the care of the child, preferably with a family member.

After being admitted to the admission ward of Světlá nad Sázavou Prison, the convict undergoes an initial interview with each of the professional staff members (psychologist, special educator, social worker, doctor) and the educator of the admission ward. If the woman has submitted all the supporting documents (annexes to the application) and the psychological assessment, which is the responsibility of the prison psychologist, has been completed, a committee of professional staff headed by the prison director meets. The latter, based on the information obtained about the convict and in accordance with the law, issues a decision on whether or not to admit the mother to the designated specialised section.

There is a separate bedroom for the mother and child/children, which is equipped with a bed and a cot with mattress, a lockable wardrobe for personal and children's belongings, a table with a chair and a fridge. There is a separate kitchenette for preparing children's meals, equipped with dishes, microwave, fridge, stove. There is also a bathroom with a toilet, a cultural room, a laundry room (Vězenská služba České republiky Věznice Světlá nad Sázavou, 2025).

8. Imprisonment of women – mothers in the Italian Republic

The Italian legal framework for the incarceration of mothers with children is relatively progressive compared to many European Union member states. While European legislation provides general guidelines,

Italy has implemented more specific and comprehensive measures to address the needs of incarcerated mothers and their children. Throughout the years there have been many changes and amendments to the Italian legislation, however, we will not discuss them in detail. We will only address the most important of them in relation to the topic of the article.

The Act No. 354 of 26th July 1975, the Regulations on the Prison Order and on the Execution of Measures for the Deprivation and Limitation of Liberty, among the various changes to the prison system. This act introduced the possibility for imprisoned mothers to keep their child in prison until the age of three. The Act No. 62 of 21st April 2011, Amendments to the Code of Criminal Procedure and to Law No. 354 of 26th July 1975, and other provisions to protect the relationship between prisoners who are mothers and their minor children, provides for raising the age limit of children who can live in prison with their mothers from 3 to 6 years and for custody in so-called Istituti a custodia attenuata per detenute madri (ICAM) (Ministro della Giustizia, 2009).

Convicted mothers may be housed with their children in standard prison facilities, typically in separate sections or specialized wards within those prisons. These wards are adapted to allow children to stay, but they are still within the security framework of a prison. However, the preferred approach is placement in the ICAMs.

The ICAMs are attenuated custody institutes for mother prisoners, with different structural characteristics compared to traditional prisons, being very similar to real homes. They, in fact, resemble a community-type organisational model, which is realised outside traditional penal institutions, in facilities equipped with security systems that are not recognisable to children accompanying their mothers. Prison officers without uniforms and specialised operators capable of supporting the inmates in caring for their children and ensuring regular outings for the children operate inside the institution.

In these facilities, a penitentiary regime is implemented based on making the prisoner responsible for assuming the parental role, thus guaranteeing adequate protection of parenthood and childhood during the execution of the sentence, trying to avoid or, at least, reduce as much as possible the traumas that may characterise the growth of the child, who is in the condition of having a parent in prison (Giusti, 2024).

Life inside ICAM is quite different from other penal institutions. The women prisoners are allowed to move freely within the facility and the rules to be followed mainly concern the proper management of space and domestic life. From Monday to Friday, the children attend kindergarten from 8:30 am to 3:30 pm. The afternoons are dedicated to activities together with the mothers and teachers. At the weekend, the children only go out on Saturdays, thanks to the support provided to the educators by volunteers.

There is no time outside the institution spent together with the mothers. Only in rare cases does the probation magistrate authorise women prisoners to participate in certain events (e.g. school play, Mother's

Day). The kindergarten teachers periodically visit the ICAM to conduct interviews with the children's mothers. Every week there is a meeting between the operators and the women prisoners to discuss, raise critical issues and collect proposals for new activities (Marietti and coll., 2023, pp. 257-263).

In conclusion, the purpose of this institution is to reconcile the need to limit the presence of children in prisons with that of guaranteeing the safety of the community, also with regard to mothers who are the recipients of a sentence of conviction or a precautionary custody order.

There were five ICAMs in total (Associazione Antigone, 2023) in Italy, however only three of them are functioning as of today - institutes in Venice, Turin and Milan (Marietti and coll., 2023, pp. 257-263). The first ICAM was inaugurated in Milan in December 2006.

To summarise, the Italian Republic is even a step ahead of the Czech Republic as they have several ICAMs established and in operation, which offer better and more humane conditions for the execution of mothers' sentences.

9. Considerations *de lege ferenda* - Is privatisation of prisons the solution?

The privatization of the prison system is defined in criminal law jurisprudence as the transfer of prisoners to facilities operated by private companies under a contract with prison administration authorities, whereby the subject of this contract is the enforcement of a sentence imposed on a convicted person by a judicial authority, to be carried out in a prison operated by a private company (Šrámel, 2015, p. 30).

Privatization is in general often associated with greater operational flexibility, which could enable the creation of specialized facilities tailored to the needs of mothers and young children. Private actors may also bring innovation in service delivery, including improved healthcare provision, psychological support, or the development of more child-friendly environments.

Privatization of prisons is not however, in general terms, a solution to the challenges of modern penal systems. It may represent a partial and context-dependent instrument of reform, the effectiveness and legitimacy of which depend on its careful limitation and alignment with the fundamental principles of criminal justice. Any adoption of privatization must be accompanied by a clear legal framework, strict state oversight, and unequivocal safeguards for fundamental rights. Further in subsection below.

Regarding convicted women, social work with them is not only time-consuming but also psychologically demanding, as convicted women are not only more open in solving their problems but also more emotional in their reactions and require more intimate communication. Women's demands for social assistance and counselling are double compared to men's demands. These are mainly convicted women - mothers who have their children placed in foster care or institutional care. The specificity of convicted women in institutions

also influences the work of psychologists. Convicted women require long-term psychological counselling and therapeutic care. They are particularly sensitive to the loss of contact with children and life partners (Keměny, 2021).

Even if the mother is in a situation where she must enter custody or serve a prison sentence, she does not cease to be a parent. The question arises as to what will happen to her minor child(ren). Previously, these women had no choice but to entrust their child to the care of another person, e.g. the biological father or relatives or to an institutional facility. However, the separation between mother and child, due to the need for an emotional relationship between these two persons not being met, could lead to emotional deprivation of the minor, which could affect the overall development of his or her personality.

By establishing specialised wards for these women, at least some of them have the opportunity to serve their sentences together with their children, thus avoiding the above-mentioned negative influences that could affect minors for life. The main purpose of all the previously mentioned specialised wards for the execution of sentences and detention of mothers of minor children is to prevent the child from having to grow up without a mother. The effort is to ensure that the emotional bonds between mother and child are not broken. While staying in a specialized unit, a strong relationship is built between the two, which has a positive effect on both. They spend 24 hours together 7 days a week. The convicted women strengthen their parental responsibility. They gain new experiences in how to work with the child. They are encouraged to be independent. The child forms a strong bond with the mother, with whom they feel a sense of security and safety.

In many states, caregivers need to make a specific request and obtain, either separately or jointly, authorization by judicial, social and/or prison authorities to allow the child to live in prison with them. Some States also explicitly refer to further indicators such as: breastfeeding needs; lack of alternative child-care solutions; suitability of prison accommodation for the child's development; health of the child; protection of the child's safety; full parental responsibility and ability to exercise parenthood; length of the sentence; and the caregiver-child relationship before entering the prison (United Nations, 2019, p. 2).

Pursuant to Slovak legislation, the purpose of serving a sentence is to protect society and to prevent further criminal activities, but also to develop positive qualities with the aim of resocialising the prisoner. As a member state of the European Union, the Slovak Republic must adopt and implement new ways and procedures in the treatment of prisoners.

Within the Slovak prison system, contact between a child and their parent in prison is similar to standard methods of outside contact for a prisoner such as telephone calls and receiving mail and parcels. The facility and quality of contact between parent and child has a significant influence on this relationship and is key in supporting the development of a healthy bond.

The challenge is then to promote the child's voice and right of access in such a regulated environment.

However, we are of the opinion that without a specialised section for the execution of sentences for mothers with children, ideal contact between mother and child cannot be ensured even if these women are provided with more phone calls and more visits.

According to the SPACE - Council of Europe Annual Penal Statistics for 2023, Slovakia is one of the last countries where mothers are not permitted to serve prison sentences with their children (Aebi, Cocco, 2023, p. 30):

Table 1 - Children living with their mothers inside penal institutions.

Country	Are young children allowed to stay with their mother inside penal institutions?	If yes	
		How many children are living with their mothers inside penal institutions?	Up to what age can they stay with their mothers inside penal institutions?
Variable code	2.3A	2.3B	2.3C
Albania	Yes	0	3
Andorra	NAP	NAP	NAP
Armenia	Yes	1	3
Austria	Yes	2	3
Azerbaijan	Yes	NA	3
Belgium	Yes	NA	3
BH: BiH (total)			
BH: BiH (st. level)			
BH: Fed. BiH			
BH: Rep. Srpska			
Bulgaria	Yes	0	0
Croatia	Yes	2	3
Cyprus	Yes	0	2
Czechia	Yes	10	3
Denmark	Yes	1	3
Estonia	Yes	1	3
Finland	Yes	10	3
France	Yes	NA	2
Georgia	Yes	1	3
Germany	Yes	NA	3 or 6
Greece	Yes	7	3
Hungary	Yes	12	1
Iceland	Yes	0	2
Ireland	Yes	0	1
Italy	Yes	17	6
Latvia	Yes	5	4
Liechtenstein	Yes	0	3
Lithuania	Yes	4	3
Luxembourg	Yes	0	NAP
Malta	No	0	0
Moldova	Yes	5	3
Monaco	Yes	0	2
Montenegro	Yes	0	1
Netherlands	Yes	6	4
North Macedonia	Yes	0	1
Norway	No	NAP	NAP
Poland	Yes	59	3
Portugal	Yes	18	5
Romania	Yes	NA	1
San Marino	Yes	0	No Limit
Serbia	Yes	6	2
Slovakia	No	NAP	NAP
Slovenia	Yes	1	2
Spain (total)	Yes	57	3
Spain (State Adm.)	Yes	46	3
Spain (Catalonia)	Yes	11	3
Sweden	Yes	NA	NAP
Switzerland	Yes	NA	3
Türkiye	Yes	565	6
Ukraine	Yes	19	3
UK: Engl. & Wales	Yes	44	2
UK: North. Ireland	No	NAP	NAP
UK: Scotland	No	NAP	NAP

a. Privatization of Prisons

Among the current issues of imprisonment, the constant increase in the number of accused and convicted persons in prisons and lack of institutes providing specialized care for vulnerable groups is particularly significant. The increasing recognition of the unique needs of pregnant women and women caring for children under three has highlighted the limitations of traditional custodial sentences and the urgent need for alternative measures. Incarceration of this population, as stated before, not only raises serious humanitarian concerns but may also have long-term adverse effects on child development and maternal health. Consequently, legal systems are increasingly exploring not only non-custodial alternatives, such as suspended sentences, probation, home detention, but also specialized mother-and-child facilities, which allow women to fulfill their custodial obligations while preserving maternal care and the child's well-being. The implementation of such alternatives must be guided by the principles of proportionality, the best interests of the child, and respect for human dignity, and should be integrated into a broader strategy that includes prenatal and postnatal care, social support, and post-penitentiary reintegration (Romža, 2020, p. 264). Changes in the prison system, like all other changes in the field of public administration, are inherently dependent on the economic conditions of a particular country, and on the priorities that are socially and politically recognised at a given time.

The increasing pressure on state-managed prison systems, driven by above-mentioned issues, financial constraints, and the growing demand for more effective and humane forms of punishment, has intensified the search for alternative models of penal administration. In this context, the limitations of exclusively state-run institutions—particularly in addressing adequate conditions of detention and providing specialized care for vulnerable groups—have brought the possibility of privatization to the forefront of legal and policy debates. Privatization is thus presented not merely as an economic option, but as a potential instrument of systemic reform, capable of introducing greater flexibility, efficiency, and innovation into the prison system.

Privatization of prisons refers to the transfer of the management, operation, or ownership of correctional facilities from government authorities to private, for-profit entities. This can involve contracting private corporations to run entire prisons or outsourcing specific services such as food provision, healthcare, or security within public facilities. In most cases, governments enter contracts with these corporations, compensating them on a per-inmate, per-day basis or through broader service agreements.

This approach has gained traction in various jurisdictions, particularly in response to rising incarceration rates, budget constraints, and pressures to increase efficiency within the penal system.

Delegating the operation of prison facilities to private entities can offer a range of benefits, primarily in terms of cost savings, efficiency, and administrative flexibility. Private companies often contend that they are

able to operate prisons at a lower cost than state institutions due to streamlined procurement processes, reduced labour expenses, and competitive management practices. For governments facing budgetary constraints and growing prison populations, privatization may appear to provide an expedient solution to financial and infrastructural challenges.

Another perceived advantage lies in the administrative flexibility of private operators. Unlike public institutions, private firms may be better positioned to introduce innovative practices, such as modern surveillance systems, vocational training programs, or specialized rehabilitation programs. Such adaptability could, in some instances, contribute to improved inmate outcomes and institutional efficiency. Furthermore, the rapid development and management of new prison facilities by private entities can serve as a short-term response to prison overcrowding, particularly where expanding the public prison estate would be costly or slow.

Despite these claimed benefits, prison privatization could potentially be criticized, particularly regarding the ethical implications and systemic risks it introduces. A primary concern is the inherent conflict between profit motives and the public interest. When incarceration becomes a commercial enterprise, there is a risk that financial considerations will override the need to maintain humane conditions, adequate staffing levels, and effective penitentiary and post-penitentiary programs. In such contexts, cost-cutting measures may result in diminished services, higher rates of violence, and poor outcomes for inmates.

The issue of privatisation of prisons is not new in the Slovak Republic (Romža, 2020, p. 269), but it is undoubtedly one of the most topical and controversial issues at present. The privatisation of the prison system is still a topical and well-established issue abroad, where elements of the private sector have already integrated the public prison system and thus created functioning models. The topic of prison privatisation has not received sufficient attention from the professional and academic public. The subject is not treated and analysed in detail.

However, the issue of prison privatisation has recently received attention, in connection with the construction of a new prison facility in Rimavská Sobota - Sabova in the form of a public-private partnership. The project represented the cheapest option for expanding prison capacity. The PPP (Public Private Partnership) method of implementation was considered slightly more advantageous than construction by the public sector. PPP financing is preferable to public debt financing if the assumption is met that the private investor will save at least 5 % on construction and 10 % on operation compared to the estimated cost of public construction (Ministerstvo financií Slovenskej republiky, 2018). On 11th March 2019, the tender for the contract - Concession for the project Construction of the Prison Facility Rimavská Sobota - Sabová was announced and conducted in several stages. Two bids from groups of contractors were evaluated. Due to complications with the procurement process, the tender was cancelled and was not further implemented (Zbor väzenskej a justičnej stráže, 2019; Caban, 2025).

Private prisons have thus, in some respects, begun to offer a potential solution under our conditions to

the long-standing problems of prison overcrowding and the absence of specialized wards for convicted mothers with minor children. There are several models of prison privatisation provided by other countries. It is therefore necessary to resolve what model would be appropriate to apply in the conditions of the Slovak Republic, so that both legal and non-legal guarantees of the legality of the execution of sentences are maintained.

On the issue of prisons, it is important to note that it concerns not only the conditions under which private prisons can be built and operated, but also the fundamental question of whether it is possible for prisons to be private at all. The very notion of a private prison does not imply that the facility is entirely managed by a private entity. It depends on the particular model, but in most cases the state retains the basic responsibility for the act of imprisonment itself and abdicates most of the obligations that arise from the services involved in the execution of the sentence (imprisonment). These services usually include accommodation, food, health care, education and employment.

In the context of the possibility of building private prisons in the Slovak Republic, it will be necessary to address the question of an effective model for the operation of private prisons in such a way that all guarantees of legality are respected. All relevant issues of construction, operation, maintenance, functioning, regime, management, control, guarding, supervision, surveillance and, in particular, the treatment of convicts will have to be agreed on a contractual basis between the state and the private entity. It can be stated that our prison legislation does not have a legal framework that both regulates and authorises the existence of private prisons.

On the other hand, our legislation does not contain any normative provision prohibiting the existence of private prisons. Some selected types of contracts known to our legal system can be used in the context of prison privatisation, particularly in the areas of construction, operation, maintenance and administration.

As stated before, there are several models to choose from. In Europe, the following models are usually used for private sector involvement in prisons:

- public finance, design and construction with private management contracts for all services;
- public finance, private construction, the state employs the prison officers, but all non-custodial services are contracted out;
- private finance, design and construction, the state employs the prison officers, but non-custodial services are contracted out; and
- private finance, design, construction and operation (Nathan, 2005).

Following the above, a realistic evaluation of prison privatization in the Slovak context must proceed from the premise that the execution of custodial sentences constitutes a core function of the state, closely linked to the protection of fundamental rights and the legitimate use of coercive power. Accordingly, privatization should not be understood as a comprehensive solution to systemic deficiencies, but rather as a limited

and carefully regulated supplementary instrument. A selective and regulated model of partial privatization may be considered appropriate.

In particular, Slovakia could allow private sector participation in non-coercive and support services, such as prison infrastructure development, facility maintenance, healthcare provision, educational and rehabilitative programs, or logistical services. Such involvement could improve efficiency and innovation without compromising the state's monopoly over the use of force and decision-making affecting prisoners' legal status.

For this model to function effectively, from our point of view, it is essential to ensure a strict delineation of competencies, whereby core custodial powers, particularly those involving restrictions of fundamental rights remain exclusively within the authority of the state, notably the CPCG. At the same time, privatization must be embedded in a robust legal framework that clearly defines the scope, limits, and conditions of private sector involvement, including licensing requirements, contractual obligations, and liability rules. Only a simple amendment to already existing legal framework would be sufficient.

Equally important is the establishment of strong oversight and accountability mechanisms, such as independent inspection bodies, judicial review, and transparent reporting obligations, in order to prevent abuses and ensure compliance with human rights standards. All private actors involved must be legally bound to adhere to both international and domestic standards governing the treatment of prisoners, with effective and enforceable sanctions in place for any violations.

10. Conclusions

The aim of this article was to assess and analyse the legislative and material conditions for the execution of sentences for mothers with children in the Slovak Republic, to compare these data with the jurisdictions of the Czech Republic and the Italian Republic and to point out the shortcomings found. In conclusion, we can confirm that our aim has been fulfilled. We have compared the legislative regulation and conditions of imprisonment of mothers with children in three different countries and found that Slovakia is on the tail and catching up with European trends.

Furthermore, we concluded that the Slovak Republic, as one of the last Member States of the European Union, does not meet modern international standards because it does not have a special section/ward for mothers in which they can carry out sentences with their minor children up to 3 or 6 years of age.

Many women in prisons are primary caregivers for children. Both the exposure of children to detention settings and the separation of children from their incarcerated and serving mothers have adverse consequences.

Non-custodial sentences are preferable where possible and appropriate, and the decision to allow children to stay with their mothers in detention should be based on the best interests of the child, also considering the child's preference, according to his or her age and level of mental development (United Nations, 2011).

In many states, caregivers need to make a specific request and obtain, either separately or jointly, authorization by judicial, social and/or prison authorities to allow the child to live in prison with them. Some States also explicitly refer to further indicators such as: breastfeeding needs; lack of alternative child-care solutions; suitability of prison accommodation for the child's development; health of the child; protection of the child's safety; full parental responsibility and ability to exercise parenthood; length of the sentence; and the caregiver-child relationship before entering the prison (United Nations, 2019, p. 12).

In other words, if the possibility arises, prison authorities should exercise discretion and assess each case individually, considering the specific circumstances of the child and family, as well as the availability of suitable alternative care within the community and/or relatives. The proposed solution of specialized wards acknowledges that a uniform policy applied rigorously across all situations, despite significant differences in context, is frequently inappropriate and may not serve the best interests of those involved.

The problem of the lack of a specialized ward could be solved in two ways, namely by completing past efforts and building the ward in the state institute for the execution of imprisonment. The second option that we have taken into consideration is more fundamental and more radical, and that is the (partial) privatisation of prisons. Such a major step would solve several problems at once, including establishing specialized institutions – wards for vulnerable groups, improve the quality of prison services, overcrowding, modernisation and, possibly, the economic problem.

To some extent the privatisation was in Slovak Republic initiated but not finished with the project Rimavská Sobota – Sabova. Should privatisation occur, to comply with all fundamental rights and principles, it will be necessary for states to ensure, when outsourcing the management of prisons to private entities, that contracts reinforce human rights, are audited to remove incentives for cutting corners on treatment, are subject to public reporting requirements, and allow for rigorous oversight and inspection mechanisms by external and independent monitoring bodies.

From an institutional perspective, privatization may offer certain advantages. It is often associated with increased operational flexibility, the potential for cost-efficiency, and the introduction of managerial innovation. Private actors may, in some instances, respond more rapidly to infrastructural needs or implement modernized systems of prison management.

However, these potential benefits are counterbalanced by significant social and ethical risks that cannot be overlooked. Our concern lies in the structural tension between the profit motive and the objectives of pun-

ishment. The deprivation of liberty constitutes one of the most severe expressions of state authority, traditionally justified by principles of justice, public protection, and rehabilitation. Transferring this function to profit-oriented actors raises the question of whether punishment can legitimately be commodified. The operation of prisons by private entities introduces incentives to reduce expenditure, which may adversely affect staffing levels, conditions of detention, and access to healthcare or rehabilitative services. Such outcomes risk falling below the standards established in instruments such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

It must be acknowledged that the potential privatization of the prison system, regardless of the form in which it is implemented, would not resolve all the structural problems that have accumulated over time within Slovak Republic. Nevertheless, a carefully designed and gradual form of privatization could contribute to addressing at least some of these deficiencies.

Such an approach presupposes a clearly defined framework governing cooperation between the state and the private sector. With that said, the establishment of transparent rules and conditions regulating this relationship across legal, economic, and penitentiary dimensions should be a priority.

From a legal standpoint, regulation should explicitly permit the establishment of prison facilities outside the infrastructure currently administered by the CPCG, with decision-making authority in this regard entrusted by law to the Minister of Justice of the Slovak Republic.

At the same time, it is essential that statutory law clearly stipulate that those functions of the CPCG which involve interference with the fundamental rights and freedoms of prisoners should continue to be exercised by and be the responsibility of state authorities. In particular, responsibilities relating to guarding, supervision, oversight, the treatment of prisoners, and ensuring compliance with the legal conditions governing the execution of sentences should continue to be performed by CPCG. These competences are already normatively defined under the applicable legal framework, specifically in Section 6 of the Act 475/2005 Coll.

Such a model would establish general normative limits for the permissible forms of cooperation between the state and the private sector in the context of prison privatization, ensuring that any involvement of private actors remains consistent with the protection of fundamental rights and the core responsibilities of the state.

Rather than replacing the state's role, it may serve as a complementary mechanism aimed at improving specific aspects of prison administration. The ultimate objective must remain the preservation of legality, proportionality, and respect for human dignity. With that said international standards such as the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) emphasize that non-custodial measures should be preferred wherever possible for pregnant women and mothers of young children.

In the meantime, regarding the legislative regulation of Slovak Republic, we would propose to adopt an

identical model to the one in the Czech Republic, as our countries have the same legislative foundations and are practically identical. There is no need to create different models or other specific legislation. A few minor amendments to existing regulations would be sufficient.

For European Union countries lacking dedicated mother-child detention facilities such as Italy's ICAMs, the absence of a tailored approach risks undermining both child welfare and the rehabilitative potential of incarceration. Establishing ICAM-like structures presents a pragmatic balance between executing justice and protecting the best interests of the child. These facilities offer a humane alternative to traditional imprisonment, reduce the trauma of family separation, and contribute to lower recidivism rates among mothers and yet they are still subject to the state and the penitentiary system. As such, investing in specialized, child-sensitive detention settings is not merely a policy option but a normative step toward aligning with European and international human rights standards.

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THE PROBLEM OF ENSURING DEMOCRATIC ELECTIONS IN UKRAINE IN THE CONDITIONS OF THE RUSSIAN-UKRAINIAN WAR

ABSTRACT: *The article analyzes the problem of holding elections in Ukraine in terms of the Russian-Ukrainian war in the context of the observance of democratic principles of elections. The author emphasizes the importance of holding democratic elections in Ukraine as a condition for building democracy, joining the EU, and forming a positive image of Ukraine in the international arena. Using general scientific, logical and empirical methods, the author investigates the main problems that will violate the democratic principles of elections in the context of elections in Ukraine during the Russian-Ukrainian war. It has been proven that holding elections in Ukraine under Russian aggression will violate the following principles of democratic elections: the principle of universal suffrage (will deprive a large number of citizens abroad of their voting rights; will make it impossible for military personnel to exercise their passive voting rights; will lead to an extremely low voter turnout due to security threats); the principle of equal elections (will put opposition political parties and opposition candidates in unequal conditions compared to pro-government candidates and political parties; will lead to a disproportion in the representation of different electoral districts in parliament); the principle of free elections (will make it impossible for candidates and political parties to freely conduct their election campaigns under martial law; will limit the possibilities for the free expression of voters' will), etc. The main potential mechanisms for resolving problems that impede the observance of democratic principles of elections in the conditions of the Russian-Ukrainian war are analyzed, and their low effectiveness is shown. The impossibility of holding democratic elections in Ukraine during the Russian-Ukrainian war is emphasized. The expediency of holding post-war elections in Ukraine and the need to apply systemic mechanisms to resolve problems that impede the holding of democratic elections, a significant part of which will remain relevant after the end of the Russian-Ukrainian war, are emphasized.*

KEYWORDS: elections; democracy; democratic principles of elections; electoral rights; Ukraine.

1. Introduction

In 2014, Ukraine became the object of armed aggression by Russia, which resulted in the occupation of Crimea and part of Donbas. On February 24, 2022, the Russian army began a full-scale invasion of the territory of Ukraine. As a result of the full-scale Russian aggression, martial law was declared in Ukraine, which led to restrictions on the political rights and freedoms of citizens. In addition, under the legal regime of martial law, some political processes were suspended, including the electoral process.

The problem is relevant in the context of the fact that, according to the Constitution of Ukraine, regular elections to the Verkhovna Rada of Ukraine were to be held in the fall of 2023. Somewhat later, in the spring of 2024, regular presidential elections in Ukraine were to be held. However, due to the Russian-Ukrainian war and the legal regime of martial law, the aforementioned presidential and parliamentary elections in Ukraine

were not held. However, in Ukraine, there are constant (with greater or lesser intensity) discussions about the expediency and feasibility of holding elections in the conditions of the Russian-Ukrainian war.

One of the important criteria that should answer the question of the expediency and possibility of holding elections in Ukraine in the conditions of Russian aggression is the ability of the election administration to ensure the democratic nature of the elections, their compliance with democratic principles of elections. At the same time, the problem of holding elections in Ukraine that will comply with democratic principles is extremely important not only for preserving the democratic progress of the state, but also for forming a positive international image of Ukraine and realizing the state's aspiration to join the EU and NATO.

The problem of holding democratic elections in Ukraine in the context of the Russian-Ukrainian war is also becoming relevant thanks to Russian propaganda and information warfare. The Russian Federation is trying to use the issue of the re-election of the Ukrainian political elite as a tool to destabilize Ukraine, actively promoting the idea of the illegitimacy of the Ukrainian government. The Russian government from time to time declares that it will negotiate the end of the Russian-Ukrainian war only with the new government elected in the elections, pushing Ukraine to hold elections in the context of the Russian-Ukrainian war and the legal regime of martial law. In this way, Russia encourages Ukraine to hold elections in conditions where it will be practically impossible to adhere to democratic principles, which will have the effect of deepening the problem of the legitimacy of the Ukrainian government, may cause a split in Ukrainian society and contribute to a decrease in support for Ukraine from international partners.

The need to study the main problems that will hinder the holding of democratic elections in Ukraine in the conditions of the Russian-Ukrainian war is also caused by the lack of thorough scientific research on this issue. All of the above makes it necessary to conduct a thorough scientific study that would allow us to investigate the main problems that hinder the holding of democratic elections in Ukraine in the conditions of the Russian-Ukrainian war, and, therefore, to answer the question of whether it is necessary and possible to hold elections during hostilities, and whether it is possible to ensure their democratic nature.

2. The relationship between elections and democracy

Elections and democracy are closely related categories and socio-political phenomena that mutually influence and complement each other: on the one hand, without democratic elections, the existence of a full-fledged democracy is impossible; on the other hand, only under the conditions of a democratic political regime is the full functioning of the institution of democratic elections possible. Therefore, elections can be interpreted as an attribute, a catalyst and, to a certain extent, an indicator of the level of democracy in a state (Buchyn 2023).

Elections play important functions in a democratic society, namely:

1. Elections are an important instrument for implementing the principle of popular sovereignty, according to which the people, as the sole source and bearer of power in the country, delegate their will to legally elected representatives (Buchyn 2016).

2. Through elections, the people are involved in the processes of public administration. For many individuals, elections are the only form of participation in politics. Therefore, it is elections that make political participation possible for the mass citizen.

3. Elections (which are a way of forming and expressing public opinion) play the role of a kind of social barometer of political life, because through the institution of elections, the attitude of citizens to politics is manifested. In this context, elections should be considered a kind of large-scale public opinion poll.

4. Elections are the main way to legitimize power in democratic countries. At the present stage the people usually recognize and support only the power elected in a legal manner. That is why elections ensure the stable development of society. However, it is worth noting that elections perform the function of legitimizing power only when they are held in accordance with the norms of current legislation and are democratic in nature. Otherwise, elections, on the contrary, perform the function of delegitimizing power (Buchyn 2016).

5. Democratic elections contribute to the easing of social tension and the achievement of social consensus, as they are a kind of way to resolve conflicts and contradictions in society. However, in this context, it is important to emphasize that elections will perform a stabilizing function only if the nature of their conduct corresponds to the population's ideas about what elections should be like. Therefore, elections conducted in an undemocratic manner, with gross violations of the law and fraud, can, on the contrary, perform a destabilizing function, leading to increased tension and conflict. Examples of the above can be the Orange Revolution, which took place in Ukraine in 2004 and was caused by large-scale fraud of the elections by the pro-government candidate V. Yanukovych. Or the 2020 presidential elections in Belarus, which were rigged and caused mass anti-government protests, which were suppressed by force (Nitchenko, Kot 2024: 24-25).

6. Elections allow citizens to exercise periodic control over the activities of the political elite. And if the government does not take into account the general public and group interests, the electorate has the opportunity to "punish" it by supporting other political forces in the elections. This motivates the political elite to act in the interests of society and not to abuse their official position.

7. The institution of elections acts as a kind of filter that prevents unpopular and incompetent politicians from coming to power, thus contributing to the improvement of the efficiency of public administration. However, the effectiveness of this function largely depends on the level of political awareness and political culture of the electorate. This is due to the fact that during the electoral process, candidates and political parties have the opportunity to use manipulative technologies and spread unreliable information, thus imposing their

position on society (Buchyn 2023).

8. Elections play an educational function, as political parties participating in elections disseminate their own election program; bring its meaning and importance to the attention of voters; promote and disseminate political ideology and a system of political values; offer voters options for solving socially important tasks and problems, etc.

9. Elections contribute to the representation of the interests of various social groups. Candidates and political parties represent various social groups, have their own social base and an electorate that is ready to vote in their support, demanding, in return, the representation of their interests at the national level.

10. Elections are a mechanism for recruiting the political elite. It is through elections that citizens have the opportunity to renew the composition of the political elite, choosing those whom they consider worthy to exercise power on their behalf.

11. As a result of elections, citizens have the opportunity to determine the direction of social development for a certain, legally defined period. By carrying out an act of expression of will, the people not only form a representative body of power and determine the configuration of forces in parliament, but also indirectly influence the formation of the executive branch of power, determine the nature of relations between the government and the opposition, and the domestic and foreign policy courses of the state (Buchyn 2016).

Therefore, in the context of clarifying the feasibility and possibility of holding elections in Ukraine in the conditions of the Russian-Ukrainian war, the issue of their democratic nature, the possibility of performing the above-mentioned democratic functions in society, is important. Many researchers rightly believe that any state is able to build a democratic regime (within which the institution of democratic elections will function) only when it is in a state of peace, accompanied by economic stability, national security, freedom of speech and pluralism. And only such conditions make it possible to hold democratic elections and form a government that will enjoy trust both within the country and in the international arena. Therefore, experts say, as of today, the defense of democracy in Ukraine is taking place on the battlefield. And only after the end of the Russian-Ukrainian war will it be possible to talk about transferring the defense of the democratic regime in Ukraine from the battlefield to the polling stations. At the same time, researchers note that it is currently difficult to predict when this might happen (Chomu 2024).

Therefore, in the context of the above, in order to make a decision on the expediency and possibility of holding elections in Ukraine in the conditions of the Russian-Ukrainian war, it is important to find out whether the basic democratic principles of elections - their general, free, equal, direct and secret nature - will be violated during such elections. After all, this is a necessary condition for electing democratic government and ensuring public and international trust in it (Buchyn 2023).

3. The problem of observing the principle of general elections in conditions of war in Ukraine

The principle of general elections is to involve the maximum number of people in the elections. At the same time, such persons must both officially possess electoral rights and have the technical ability to exercise them. The last aspect of the principle of universal suffrage depends on the reliability and completeness of the electoral register and electoral lists (Buchyn 2016).

In the context of adhering to the principle of general elections during the Russian-Ukrainian war, it is worth mentioning a number of problems:

A. Voting abroad. The aforementioned problem is multifaceted and related to a number of smaller problems and threats. First of all, we are talking about the unprecedented scale of this type of voting for Ukraine (and for the world community as a whole). Under the influence of hostilities, a large number of Ukrainian citizens were forced to leave for Europe (over 8 million people as of early 2023) or Russia (about 3 million people). Therefore, excluding children, researchers emphasize that as of 2023, about 10 million adult Ukrainian citizens who are voters were outside Ukraine. It is worth noting that in 2025, such figures did not undergo significant changes. Interestingly, before the full-scale Russian invasion, the number of Ukrainian voters who were abroad was 25 times smaller. In particular, in the 2019 presidential elections Only a little over 400 thousand voters – citizens of Ukraine – were registered in the foreign electoral district (Afanasieva 2023).

Researchers rightly note that the primary issue that needs to be resolved in the context of ensuring the voting of Ukrainian citizens abroad is the registration of such citizens. Election administration bodies should know exactly in which country (and region of the country) Ukrainian voters are located, because not all of them are officially registered. Or they are registered, but do not actually live there (Matola 2023).

In the context of voting by Ukrainian citizens abroad, the registration problem is complicated by the fact that, according to the Ministry of Foreign Affairs of Ukraine, only about 5% of Ukrainians who have left the country have registered with consular authorities. This significantly complicates the entry of information about such citizens and the updating of the State Register of Voters (Makarov 2023).

Another problem related to voting by citizens abroad is the actual inability to ensure the expression of will of such a large number of voters. As of today, 102 polling stations have been created and are operating to ensure the voting of Ukrainian citizens who are abroad on election day (100 of them are established in diplomatic institutions of Ukraine abroad, another 2 are on the territory of military units deployed outside Ukraine). (Yurydychni 2023). At the same time, the electoral legislation of Ukraine does not apply to foreign polling stations the restrictions on the maximum limit of 2,500 voters that can be included in the voter lists at one

polling station, which are inherent in regular polling stations (Electoral 2020).

In this context, analysts of the Civic Network OPORA rightly note that this provides more opportunities for the implementation of voting abroad, but is completely disconnected from modern realities. And even before the full-scale invasion, the possibilities of effective functioning of foreign polling stations were based on the presumption of a very low turnout of foreign voters. And the number of voters at individual foreign polling stations was so large (in some cases, tens of thousands of voters) that even with an average turnout, this would have paralyzed the voting process. In addition, the formation of foreign polling stations was based on the diplomatic ties available in Ukraine, and not on real electoral needs (Yurydychni 2023).

For example, in the 2019 presidential election, 55,027 voters voted in the first round in a foreign electoral district. In the second round of the 2019 presidential election, voter turnout was slightly higher: 59,834 voters voted abroad (Vybory 2019). The above figures show that the number of Ukrainian citizens who were abroad during the 2019 presidential election was smaller than the number of Ukrainian voters who were abroad during the full-scale Russian-Ukrainian war. Therefore, the number of Ukrainian citizens who would seek to vote in the elections during a full-scale war is much higher than it was in 2019.

In the current conditions of the Russian-Ukrainian war, for example, there are more than a million Ukrainian voters in Poland alone. Moreover, only 4 foreign polling stations operate in Poland. Therefore, according to experts, under the current state of affairs during the elections, each of the 4 Ukrainian foreign polling stations located in Poland would have more than 300 thousand voters. Which automatically makes it impossible for the total majority of such Ukrainian citizens to vote (Makarov 2023).

B. Voting by internally displaced persons (IDPs). The next, no less large-scale and important issue for elections in the conditions of war in Ukraine is the problem of voting by internally displaced persons. It is worth noting that according to official data, there are currently 4.8 million internally displaced persons in Ukraine. However, researchers note that the real figure is much higher, and the number of internally displaced persons in Ukraine reaches 7 million people (Afanasieva 2023).

It is worth noting that in 2019, during the presidential elections, the number of internally displaced persons was several times smaller and amounted to slightly more than 1 million 200 thousand people. At the same time, a small number of IDPs took part in the voting in the 2019 presidential elections (less than 76 thousand people), which was only 6% of the total number of internally displaced persons (VPO 2019).

C. The problem of the electoral register and voter lists. IFES expert O. Klyuzhev notes that under martial law, the bodies responsible for maintaining and updating the State Voter Register have suspended their work. Moreover, even the initial registration of voters was not conducted in the occupied and frontline territories. Therefore, the problem lies both in the need to update the State Voter Register and in providing voters with the opportunity to decide on their place of voting after the end of the Russian-Ukrainian war, which will

take some time (Kliuzhev 2023).

This situation with the State Voter Register is quite understandable, given the brutal violation of the rules of war by Russian soldiers. Russian special services tried to obtain data on the population of Ukraine with the aim, in particular, of holding pseudo-referendums on the territory of Ukraine. Therefore, the termination of the State Voter Register became an adequate and preventive measure to protect the population of Ukraine from Russian occupiers (Hryniuk, Hutsuliak 2023: 117).

D. The problem of implementing passive voting rights for citizens abroad. This is a residency requirement, which is the last 5 years of residence in Ukraine for candidates for people's deputies and the last 10 years for candidates for the President of Ukraine. Therefore, a long stay of citizens abroad may deprive them of the opportunity to run in presidential or parliamentary elections (Yurydychni 2023).

E. The problem of voting by voters in occupied territories. In this context, it is worth noting that as of today, the Russian army (for the period from 2014 to 2024) has occupied about 26% of the territory of Ukraine. Of course, it is impossible to accurately estimate the number of Ukrainian voters who are currently in the temporarily occupied territories. But it is obvious that we are talking about several million citizens who will be deprived of the right to participate in the elections (Vybory 2024).

It should be noted that in 2019, during the presidential and parliamentary elections, voting was not fully held in 26 electoral districts: 12 electoral districts in the Autonomous Republic of Crimea, 9 electoral districts in the Donetsk region, and 5 electoral districts in the Luhansk region. In another 10 electoral districts and Donbas, elections were partially held (TsVK 2019).

F. The problem of participation in elections by military personnel. It is worth saying right away that this problem concerns the exercise of both active and passive electoral rights by military personnel. On the one hand, it is difficult to ensure that military personnel on the front line can participate in voting during active hostilities as voters without a threat to their lives and the "collapse" of the front. On the other hand, it is even more difficult to ensure that military personnel can participate in elections as candidates. And even more so to ensure that they have equal conditions alongside other civilian candidates (Liskovych 2023).

4. The problem of observing the principle of equal elections in the conditions of the Russian-Ukrainian war

According to the principle of equal elections, citizens should have equal opportunities to influence the electoral process and the results of the elections. The principle of equal elections was primarily reduced only to the presence of an equal number of votes for each voter. However, later it was rightly believed that the principle of equal elections should also provide for the equal "weight" of each vote. However, we believe that

the principle of equal elections should be interpreted even more broadly: not only equal opportunities for voters to influence on voting day are important, but also at all other stages of the electoral process. Therefore, every citizen should be in equal conditions (whether in the status of a voter or in the status of a candidate) at all stages of the electoral race.

In the context of observing the principle of equal elections during the Russian-Ukrainian war, it is worth talking about a number of problems:

A. Ensuring equality when voting abroad. Researchers rightly emphasize that the problem of foreign elections is not limited to the issue of voting. According to IFES expert O. Klyuzhev, during elections in foreign constituencies, important issues are access of Ukrainians abroad to campaign products, meetings with candidates or political parties, etc. In addition, if elections in foreign constituencies are not properly conducted, according to O. Klyuzhev, the equality of elections and the rights of women and youth, who are today the main foreign voters, will be violated (Klyuzhev 2023).

B. The problem of the electoral system. It is worth noting that the current electoral system (according to the Electoral Code, a proportional electoral system with open lists should be used in the next parliamentary elections in Ukraine) does not correspond to the realities of elections in wartime. This is, in particular, because the aforementioned electoral system involves the use of a regional approach (the formation of 27 regional electoral districts) and the dependence of the number of mandates for election on the number of voters in a particular region who took part in the vote (Electoral 2020).

The aforementioned situation could potentially lead to a number of problems. In particular, this concerns the disproportion of representation of electoral regions in the future parliament. The fact is that in some regions (primarily frontline and occupied) there are quite a few voters, while in other regions (where there is no fighting) there are much more, primarily due to internally displaced persons. Therefore, the first (frontline) category of regional electoral districts could potentially be minimally represented in the next parliament. On the other hand, the representation in parliament of the second category of regional electoral districts could be exaggerated (Matola 2023).

An additional problem in the context of the electoral system may be the need to redraw electoral districts in the event that certain territories are still under occupation during the elections. In addition, the fact that a very large number of voters (some internally displaced persons and citizens who will be abroad during the elections) will still be forced to vote only for the party list makes the need for a proportional electoral system with open lists of candidates questionable (Zaiats 2023).

C. The problem of equal conditions for the participation of candidates and political parties in the electoral process. For the democratic elections, it is important that candidates and political parties participating in the elections have the opportunity to conduct a full-fledged election campaign under equal conditions. This is

especially relevant for such aspects of the issue as financing of political parties, the restoration of party centers in temporarily occupied and frontline territories, opportunities for election campaigning, etc. (Afanasieva 2023).

Ensuring equal access of candidates to the media remains problematic in this aspect, which is an important condition for ensuring the principle of equal elections. In this context, the presence of the Unified Information Marathon in Ukraine, a regime in which the majority of Ukrainian media operate under state control, is seen as problematic, first of all. This puts pro-government political forces in a more advantageous position compared to the opposition (Hryniuk, Hutsuliak 2023: 118).

On the other hand, it should be understood that this is a natural consequence of the Russian-Ukrainian war. After all, in war conditions, power is centralized and the powers of executive structures are increased, which helps increase the chances of the current government winning elections.

D. The problem of protecting citizens' electoral rights. This aspect of the issue is crucial not only for ensuring the principle of equal elections (protection of electoral rights makes it possible to make citizens equal before the law during elections), but also for ensuring democracy in general (human rights and their protection are an integral part of democratic governance). In this context, frontline (as well as temporarily occupied and liberated) Ukrainian territories, where judicial bodies have suspended their activities due to the existing threat, may be problematic (Afanasieva 2023).

5. The problem of observing the principle of free elections during the Russian-Ukrainian war

According to the principle of free elections, a citizen must decide for himself whether to participate in elections. The principle of free elections, in addition to the voluntary participation of citizens in elections, also implies compliance with two important conditions: 1) the ability of the voter to freely form his position during the elections; 2) the ability of the voter to freely express his position during the voting procedure.

In the context of observing the principle of free elections, law enforcement agencies should not interfere in the electoral process, and voters should have the right and opportunity to freely collect, use and disseminate information, unite in parties and public organizations in order to protect their rights and freedoms. In addition, the principle of free elections provides for the right of citizens to peacefully organize and hold strikes, rallies and demonstrations within the framework of current legislation (Buchyn 2016).

The implementation of the principle of free elections also implies compliance with the established voting procedure. An important condition for free expression of will is a legal procedure for counting votes, the absence of fraud not only during the counting, but also during the transfer of votes and the tabulation of voting results (Buchyn 2016).

In the context of adhering to the principle of free elections during the Russian-Ukrainian war, it is also worth mentioning a number of problems:

A. The problem of electoral fraud. In this context, we are talking, in particular, about abuses that are already traditional for domestic electoral practice, such as election bribery (this may be especially relevant in the context of a significant decline in the level of well-being of Ukrainian citizens in the conditions of the Russian-Ukrainian war) or the use of administrative resources.

It is worth noting that the Ukrainian electoral experience has already witnessed the practice of large-scale abuses and use of administrative resources during elections, when, due to the centralization of power, most of the democratic principles of elections were systematically and grossly violated. The apogee of the use of administrative resources in Ukraine was reached during the 2004 presidential elections, when the elections were falsified on a large scale in favor of the pro-government candidate V. Yanukovich. This led to mass protests of Ukrainian citizens called the “Orange Revolution” (Buchyn 2016).

Similar conditions that could potentially contribute to the large-scale use of administrative resources during elections (centralization and monopolization of resources by the authorities, caused by the sole victory of the «Servant of the People» party in the elections, and reinforced by martial law during the Russian-Ukrainian war) exist in Ukraine today.

The first problem, according to domestic expert O. Klyuzhev, can be partially solved by depoliticizing the law enforcement system, the second problem is the introduction of state financing of both parliamentary and extra-parliamentary political parties (Kliuzhev 2023).

It is also possible to predict that security threats will increase the chances of election results being falsified on election day. For example, in the case of prolonged airstrikes, there will be a problem in controlling election documentation, which will be located in unprotected polling stations, which will increase the chances of falsification and forgery of voting results (Hryniuk, Hutsuliak 2023: 120).

Researchers also emphasize that in times of war, the authorities have more opportunities to influence the outcome of elections. In times of security threats, the authorities may create obstacles to voting for certain categories of citizens (for example, military personnel) or prohibit holding elections in certain territories, explaining this by security threats or the need to strengthen security. To do this, it is enough for the authorities to know that certain categories of citizens or residents of certain regions are opposed to them (Novak, Moriak-Protopopova 2023: 129-130).

B. The problem of low voter turnout. This forecast of the potential situation is based on several reasons. First, it is worth considering the factor of active mobilization, which is necessary to strengthen Ukraine's defense capabilities. Therefore, it is logical to assume that a significant part of the conscripted voters, who are currently hiding at home or trying to avoid the possibility of meeting with workers who carry out mobilization,

will most likely ignore the elections and not come to the polling stations (Hryniuk, Hutsuliak 2023: 117).

Secondly, the presence of security threats will reduce voter turnout. After all, every voter will understand that any polling station is a potential target for both Russian missiles and possible sabotage. Moreover, Russia can very easily disrupt the voting process by organizing long-term alarms (in particular, by organizing continuous flights of missile-carrying aircraft). In this way, the number of voters who will be able to vote will be quite low. As will the level of trust in the authorities elected under such low voter turnout (Hryniuk, Hutsuliak 2023: 118-120).

According to the head of the civil network OPORA O. Aivazovska, the Russian army does not neglect the practice of shelling places where Ukrainian citizens gather, having previously shelled places receiving humanitarian aid, an exhibition of drones in Chernihiv or participants in a funeral in the village of Groza. Therefore, according to the Ukrainian expert, if there are intensive Russian shelling on voting day, the voter turnout will ultimately be only 5-10%. This can have a very negative impact on the level of legitimacy of the government elected as a result of such elections (Vybory 2023).

C. Restrictions on the freedom of action of participants in the electoral process. The point is that in conditions of war and martial law in Ukraine, a number of rights and freedoms of citizens are restricted, which is justified to ensure security. Therefore, such rights that are important for the proper organization of the electoral process and election campaign are restricted, as the right to peaceful assembly, the right to freedom of movement, the right to freedom of agitation, etc (Hryniuk, Hutsuliak 2023: 118).

This problem is particularly relevant in the context of ensuring freedom of speech and the free functioning of the media. It provides not only for the freedom to disseminate information, but also for free access of representatives of the media sector to any information about the elections. After all, this is, in turn, a necessary condition for voters to receive reliable and diverse information about the electoral process and its results (Zaiats 2023: 46).

6. The problem of adhering to other principles of democratic elections in the conditions of the Russian-Ukrainian war

In addition, holding elections in the context of the Russian-Ukrainian war will potentially violate (albeit to a lesser extent) other democratic principles of elections. For example, in the case of the introduction of alternative voting methods such as proxy voting or electronic voting (they are considered a means of ensuring the principles of universal and free elections), the principle of direct elections and the principle of secret ballot will potentially be violated (Markovets, Buchyn, Sprinsyan, Liubchenko 2024). The latter will also potentially be violated in the event of a predicted large influx of people at foreign polling stations. In such a case, huge

queues will form, and people will potentially (to speed up the process) vote outside polling stations or voting booths, jeopardizing the secrecy of the vote.

The difficulty of forming and ensuring a high level of professionalism of election commission members in the conditions of holding elections during the Russian-Ukrainian war will negatively affect the principle of effective election administration. In addition, the restrictions imposed by the legal regime of martial law will negatively affect the implementation of the principle of freedom of campaigning and the principle of public elections. Finally, in the case of holding elections in the conditions of the Russian-Ukrainian war, we find it doubtful that the principle of liability for violations of electoral legislation, etc., will be effectively observed.

7. Conclusions

An important condition for holding elections is the ability to ensure their democratic nature and compliance with democratic election principles. However, holding elections in Ukraine in the context of the Russian-Ukrainian war will significantly violate a number of democratic principles: the principle of universal suffrage (will not allow significant categories of voters to vote; will limit the implementation of the passive right of servicemen, etc.); the principle of equal elections (will not allow the creation of equal conditions for participation in elections by different subjects; will lead to a disproportion in the representation of the interests of voters from different electoral districts in parliament, etc.); the principle of free elections (will create a threat of pressure and abuse during elections; will potentially contribute to voter bribery and falsification of voting results; will limit the opportunities for candidates and political parties to conduct election campaigns); a number of other important democratic principles of elections (will violate the transparency of the electoral process; will reduce the efficiency of the administration of the electoral process; will contribute to the violation of the secrecy of the vote; will limit the possibilities for holding those responsible accountable for violations of electoral legislation, etc.).

As we can see, Russia's full-scale armed aggression against Ukraine, the socio-political and security situation in the country make it impossible to hold democratic elections. If we ignore this fact and agree to elections that will be held with gross violations of democratic principles of elections, this will have a number of extremely negative and dangerous consequences for Ukraine. These include, in particular, delegitimization of power, political division in Ukrainian society, an increase in the level of conflict, etc. Therefore, holding elections in Ukraine in the conditions of the Russian-Ukrainian war will meet Russian interests; will turn the institution of democratic elections in Ukraine into a farce; will contribute to the formation of a negative international image of Ukraine; may lead to results opposite to those desired, which will significantly reduce the level of consolidation of Ukrainian society and, as a result, may lead to defeat in the war and the collapse of

Ukrainian statehood.

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ESTONIAN MODEL OF PROFIT TAX – PERSPECTIVES ON THE EXAMPLE OF ESTONIA, GEORGIA AND POLAND

ABSTRACT: *The purpose of the research is to study and analyze the results of the reform - the introduction of the Estonian model of profit tax, carried out in the direction of tax policy, both from a theoretical and a fiscal point of view (example of Estonia, Georgia and Poland). Based on the review of the legislative framework of the reform, the results of the fiscal and entrepreneurs survey are analyzed qualitatively and quantitatively. The target audience is entrepreneurs who pay profit tax. Both the legislative review and the fiscal results analyzed on the example of Estonia, Georgia and Poland have shown a potential association between two events - that this reform has a positive result only in the long term (as the income from the profit tax increases several times). And, in the short term, it can cause a budget deficit (which is manifested in the fact that the income from the profit tax in the budget decreases) for a country with a large share of profit tax in its budget. Despite the review of the legislative framework of these countries, the research and literature on this topic is limited, which would allow us to analyze this reform from different perspectives. The said research is to some extent an indicator for the institutions implementing the reform, how appropriate it is to carry out the said reform in their countries (taking into account the compliance with the existing legislation). This study offers valuable information to policymakers in this area.*

KEYWORDS: Estonian model of profit tax; Entrepreneurship; Tax policy; Estonia; Georgia; Poland.

1. Introduction

Mechanisms of economic policy are always a subject of discussion, because it affects the state of the country in different directions. In this article, we will discuss one of the important directions of economic policy, in particular tax policy - the introduction of the preferential model of profit tax - the Estonian model on the example of Estonia, Georgia and Poland. It should be noted that this model is implemented only in the above-mentioned countries. The article reviews both the legislative framework of all three countries, as well as the fiscal consequences of this reform (in the case of Poland, the reform is newly introduced and the analysis period is insignificant). Attention is also focused on the research that I conducted in connection with the reform in Georgia in two stages - in 2019 and 2023. The comparison of the mentioned periods allows us to analyze whether the views and expectations of entrepreneurs have changed in the given period of time.

To promote entrepreneurship, countries apply various tax policy measures. Among them is the consideration of the models of relief in different taxes. It is natural that the country chooses a different model depending on its specificity, where the priority directions of the country are taken into account. First of all, it should be noted

why the Estonian model of profit tax is preferential - The main essence of this model is not to tax the reinvested profit, which is directly related to the promotion of entrepreneurship. Accordingly, profit tax is one of those that directly reflects the situation of entrepreneurs/firms. Therefore, if it is in the country's interest to promote the given sector, in this case it is important to consider such a preferential model as the Estonian model of profit tax. It should be noted that this model is not widespread, which does not allow for a complete analysis, however, for comparison, we can consider three countries where the mentioned model is functioning, namely: Estonia, Georgia and Poland - on the example of which we can conduct some analysis. Based on the fact that when the Estonian model of profit tax was introduced in chronological order, it looks as follows: in Estonia - from 2000, in Georgia - from 2017, and in Poland from 2021. If we take into account the issue of studying the long-term effects of the mentioned model, for this stage it is only possible to compare the statistics of Estonia and Georgia. In this article, we will discuss both the objects of taxation and other important issues in this tax, we will see what is the difference in the case of each country and what fiscal result it brought in the tax of profits. The fiscal result can be seen when considering the example of Estonia and Georgia (Partly based on the example of Poland). What was the trend of revenues from profit tax to the budget and when did it return to the level before the introduction of this model. Naturally, the legislative records are not identical, as a number of peculiarities are taken into account in the case of the given countries, although the main essence of the given preferential model is preserved, so that the reinvested profit is not taxed. Which will support the expansion of existing firms/entrepreneurs, as well as the establishment of startups and the promotion of their activities at the initial stage.

1. Literature Review

Based on the specificity of the issue, the literature to be discussed and analyzed for us is the legislation of the given countries, which regulates the principles of taxation of profit tax. The mentioned legislation allows us to review what types of financial operations are exempted from profit tax by the legislation in a given country, what is considered as an object of taxation with profit tax, what is the rate, etc. Also, legislation in a number of countries specifies different distinguishing marks according to legal forms and firm size. Therefore, all the interesting details that can give us a general picture are the legislation and the records of various by-laws.

In general, when a country considers establishing a preferential tax model in the country, and for the purpose of our article it is the Estonian model of profit tax, naturally a number of issues need to be harmonized with other legislation in the country. Therefore, this is a very difficult issue. It should be noted that, depending on the country, this direction is regulated by various legislative acts, for example, in the case of Estonia, the

"income tax act", and in the case of Georgia, the tax code. However, it must be said that for the purpose of the review, it is quite difficult to review the legislation in general and compare them with each other, in order to theoretically identify those financial operations that the state refuses to tax in favor of entrepreneurs. Accordingly, the given legislative records allow us to determine what income the state refuses and what results this can bring to the country both in terms of the development of entrepreneurs and in terms of revenues in the budget. This allows us to formulate a hypothesis in this direction.

First of all, let's study the important main issues from the legislative point of view (according to the countries under consideration) and then move on to the evaluation of the fiscal consequences of the reform.

First of all, we should review the legal framework of the three countries - Estonia, Georgia and Poland in the profit tax, in order to have a basic idea about the objects of taxation, the tax rate and other exceptions. What distinguishes them from each other.

1.1 Overview of the legal framework in Estonia

The rules for the taxation of income tax under Estonian tax legislation are mainly established in accordance with the Income Tax Act. It is natural to take into account certain exceptions, which are taxed at a rate different from the standard one, and also the objects of taxation and the time of the operation are different from the standard one.

Income tax is imposed on profit made by a resident legal person and a profit-making state agency upon distribution, irrespective of the manner and form of distribution of profit, gifts made, donations and costs of entertaining guests, expenses and payments not related to business and objectives set out in the articles of association as well as assets to be taken out to a permanent establishment (Income Tax Act, 1999). Except in exceptional circumstances, the rate of income tax is 20 per cent. the taxable amount shall be divided by the number of 0.80 before it is multiplied by the tax rate (Income Tax Act, 1999).

When we talk specifically about business income, Estonian tax law (as well as Georgia) specifies what is meant and how business income/profit is defined. The said direction is formulated as follows:

Income tax is charged on income derived from business (business income), regardless of the time of its receipt. Business is a person's independent economic or professional activity (including the professional activity of a notary or bailiff and the creative activity of a creative person), the aim of which is to derive income from the production, sale or intermediation of goods, provision of services, or other activities, including creative or scientific activity. Transfer of securities owned by a natural person does not constitute business. Types of income (Income from rent and royalties) may also be included in business income. Sole proprietors entered in the commercial register or the register of a Contracting State and non-resident sole proprietors who have a

permanent establishment registered in Estonia may make the deductions from their business income. Expenses incurred before registration of a sole proprietor may be deducted from business income if they are related to the registration of the sole proprietor or obtaining of activity licences and registrations necessary for commencement of business activities. Deductions relating to enterprise shall be made from the business income of the period of taxation of a sole proprietor and the received amount shall be divided by 1.33 before it is multiplied by the tax rate, if the Social Tax Act is applied upon taxation of business income. The amount of social tax exceeding the business income subject to taxation shall be carried forward to subsequent periods of taxation. If the price of a transaction concluded between a sole proprietor and a person associated with the sole proprietor in the course of business differs from the market value of the above transaction, income tax shall be imposed on the amount which the taxpayer would have received as income or the amount which the taxpayer would not have incurred as expenses if the transfer price had conformed to the market value. If a sole proprietor earns business income in a foreign state, it is not subject to income tax in Estonia if both of the following conditions are met: 1) the business income has been earned through his or her permanent establishment situated in the foreign state; 2) the specified income has been taxable income in the foreign state and if this is certified and the amount of income tax is indicated on the certificate (Income Tax Act, 1999).

Deductions from business income (Income Tax Act, 1999).

- Expenses related to business;
- Limitations on deduction of expenses;
- Expenses not deductible from business income;
- Carrying forward of expenses exceeding business income.

1.2 Overview of the legal framework in Georgia

With regard to Georgia, we can draw a parallel to the legislative records related to profit tax and business income in general, what is considered business income, at what rate it is taxed and what special rules apply in this regard.

The Estonian model of profit tax entered into force in Georgia in 2017 (the so-called Estonian model). In accordance with the aforementioned legislative change, all types of activities, except for taxpayers with banking and financial activities, were subject to this model in terms of profit tax. For them, the previously existing profit tax model in Georgia remained in force, according to which - the object of taxation with the profit tax of a banking institution, credit union, microfinance organization, lending entity is the difference between the total income received during the calendar year and the amounts of deductions stipulated by the

Tax Code of Georgia. Regarding, according to the Estonian model of profit tax, the payer of profit tax is a

resident enterprise and a non-resident enterprise, which carries out its activities in Georgia through a permanent establishment and/or receives income from a source in Georgia. As for the object of taxation, the resident enterprise is defined as follows (Tax Code of Georgia, 2010):

- Distributed profit;
- An incurred expense or other payment that is not related to economic activity;
- Free delivery of goods/services and/or transfer of funds;
- Representative expenses incurred in an amount greater than the threshold amount established by the Tax Code of Georgia.

Regarding, the threshold amount of the representative expenses incurred during the calendar year for the purposes of profit tax is 1 percent of the income received during the previous calendar year, and if the expenses incurred exceed the received income - 1 percent of the expenses incurred. The threshold amount of the representative expenditure incurred in the calendar year of establishment of the enterprise is 1 percent of the expenditure incurred before the end of the current calendar year. As for exemptions from this tax, there are a number of operations that are exempt from profit tax (Tax Code of Georgia, 2010).

As for the profit tax rate in Georgia before the introduction of this model, it was 15%, and after the introduction of the Estonian model of profit tax, it remained the same for taxpayers of this model - 15%, and for taxpayers with banking and financial activities, the rate for them remained the same until 2024, and from 2024 the taxable object remained the same, and the rate increased to 20%. It should also be noted that the reporting periods are different for taxpayers of the Estonian model of profit tax and for taxpayers with banking and financial activities, who are taxed under the standard model of the previously existing profit tax. In particular: the period of declaration (return) of profit tax for banking institution, credit union, microfinance organization, lending entity is once a year - the declaration (return) to the tax authority is submitted until April 1 of the following reporting year. As for the taxpayers of the Estonian model of profit tax, they are obliged to submit the declaration (return) according to the reporting month to the tax authority no later than the 15th day of the month following the reporting month (Tax Code of Georgia, 2010). Naturally, there are also certain exceptions in the Tax Code of Georgia that apply to this part of the tax.

1.3 Overview of the legal framework in Poland

It should be noted that the Estonian model of profit tax is not widespread, Georgia introduced this model into the tax legislation after Estonia in 2017 (naturally, with small differences and not identically). On the other hand, Poland has also implemented the Estonian model of corporate income tax into their legislation

in 2021. In this model, the tax is paid only when the income is distributed (e.g. in the form of a dividend). In 2022 and 2023, the Polish Deal packages introduced important amendments with regard to the scope and application of the lump-sum scheme of Estonian CIT (Worldwide Tax Summaries, 2024).

Polish tax residents are subject to tax on their worldwide income, unless there is an applicable double tax treaty (DTT) in place exempting the foreign-sourced income from taxation in Poland. Non-residents are taxed only on their Polish-sourced income. According to the current version in Poland, the standard CIT rate is 19%. The reduced CIT rate of 9% can be applied to income, other than capital gains, if the taxpayer: a) start business activity and the revenues in the fiscal year in which you applied the reduced tax rate did not exceed the PLN equivalent of EUR 1 200 000; b) continue to run business activity and meet the following two revenue-related criteria: you are a small taxpayer – gross sales revenues (together with due VAT) in the previous fiscal year did not exceed the PLN equivalent of EUR 2 000 000, and your revenues in the fiscal year in which you applied the reduced rate did not exceed the PLN equivalent of EUR 1 200 000 (Ministry of Finance of Poland, 2026).

The tax base for CIT purposes includes all sources of income, established individually for each source of income as the difference between taxable revenues and tax-deductible costs within a given source. The taxable period is the calendar year (between 1 January and 31 December). Companies are entitled to choose another (than calendar) fiscal year for the purpose of CIT. Companies are, in general, required to file their tax returns electronically. The annual CIT return should be submitted to the tax office within three months following the end of the tax year. The same deadline as the CIT return applies to the settlement of the annual CIT liability (Ministry of Finance of Poland, 2026).

The lump-sum tax on income is accrued at the moment of the distribution of profit and in a different amount than the standard CIT. After the amendment introduced in 2023, the deadline for paying the lump-sum tax falls by the end of the third month of the tax year following the year in which the profit was distributed; specific deadlines apply to the other taxable events. For small taxpayers and for taxpayers starting business activity on these principles, it is 10% of the tax base. In the case of other taxpayers, it is 20% of the tax base. The main advantages of switching to Estonian CIT taxation are: lack of separate accounting for tax purposes (tax settlement is based on the net profit); tax due only when profits are distributed and is calculated on the amounts of distributions (not on reinvested profits), and as to the rule, tax payment deadline is deferred until the year following the year when distribution takes place and there are no tax advances (Worldwide Tax Summaries, 2024).

1.4 Brief summary of the legislative framework in Georgia, Estonia and Poland

To briefly compare the respective countries, the profit tax rates and payment terms are as follows (See table 1):

Table 1: Comparison of profit tax rates and filing deadlines in Estonia, Georgia and Poland

Topic	Estonia	Georgia	Poland
Corporate income tax (CIT) rates	20% (undistributed profits are tax exempt)	15% (20% for banks, credit unions, microfinance organisations, and loan providers).	19%
Corporate income tax (CIT) due dates	By the tenth day of the month following a taxable distribution or payment.	CIT returns should be submitted on monthly basis by the 15th day following the month when the taxable transaction took place	Within three months following the end of the tax year.
CIT final payment due date	By the tenth day of the month following a taxable distribution or payment.	CIT is due on a monthly basis by the 15th day following the month when the taxable transaction took place.	Within three months following the end of the tax year.
CIT estimated payment due dates		CIT is due on a monthly basis by the 15th day following the month when the taxable transaction took place.	Monthly instalments paid by the 20th day of the following month.

Source: Worldwide Tax Summaries, Tax Code of Georgia, Income Tax Act

A detailed study of the legal framework of all three countries and the identification of its distinguishing features from the point of view of taxation (by country), Where the types of income that are taxed by profit tax and therefore also other types of income and financial operations that are exempt from profit tax - primarily reinvested profits - allow us to formulate hypotheses as follows:

Hypothesis 1: The Estonian model of profit tax has a positive effect on budget revenues in terms of profit tax in the long term.

Hypothesis 2: The Estonian model of profit tax can in the short term cause budget deficits for countries where the share of profit tax in total revenues is high.

The subsequent analysis is descriptive and exploratory in nature. The hypotheses provide a framework for conducting the analysis, however, the study does not attempt to establish their causal validity through statistical hypothesis testing. Instead, the analysis examines whether the patterns and changes in the three countries are consistent with the expectations expressed in the hypotheses. Given the "before-and-after" comparative design and the lack of a counterfactual, the findings are interpreted as descriptive evidence and should not be taken as definitive proof of causal effects.

2. Methodology

The purpose of the research is to study and analyze the results of the reform carried out in the direction of tax policy, namely the introduction of the Estonian model of profit tax, both from a theoretical and a fiscal point of view. Based on the fact that the given reform was carried out in three countries - Estonia, Georgia and Poland, the subject of the study is the discussion and mutual comparison of the legal framework of the given countries, as well as the analysis of the fiscal results of the reform. Several research methods such as inductive, deductive, comparison, processing/analysis of statistical data were selected for the purpose mentioned, and in addition, the research was conducted by the author among entrepreneurs in Georgia who evaluated the given reform in different directions. The research was conducted in two stages in 2019 and 2023. Which additionally allows us to compare the data with each other, whether the views and expectations of entrepreneurs have changed in relation to this reform. The survey format was a Google Forms created survey that was sent to entrepreneurs by email (The mentioned emails are public information that can be found on the www.yell.ge website), the research was also posted on social networks - [linkedin.com](https://www.linkedin.com) and facebook (in a special Facebook group where entrepreneurs and their representatives/accountants are members), a certain number of entrepreneurs were also interviewed in the form of a telephone survey. 120 entrepreneurs participated in the 2019 survey¹, and 510 entrepreneurs in 2023² (At both stages, the survey was conducted in Georgian).

In both the 2019 survey (16 questions were asked) and the 2023 survey (21 questions were asked), the questions were grouped into two areas — mandatory and optional (closed-ended and open-ended questions). Several questions also related to the categorization of entrepreneurs (which is identical in both surveys), namely: legal form, type of activity, place of actual activity — region. Some of the questions were about various tax reforms implemented in Georgia. Several questions were also related to identifying the views of entrepreneurs, such as factors hindering their activities, various desired reforms, etc. Due to the purpose of this article, only those key questions and their results that were directly related to the Estonian model of profit

¹ 2019 - <https://forms.gle/KMZVDR1y35BLNB3RA>

² 2023 - <https://forms.gle/RNXCTiHCo7esN3L48>

tax were taken from the aforementioned studies.

Given the number of respondents in the two stages and considering that the study was conducted with full anonymity, it is also possible to draw attention to the limitation that, in the case of any percentage change, whether this indicates a change in the opinion of a specific entrepreneur about a particular reform or simply the impact of the new respondents' answers on the overall indicator is difficult to prove with certainty, since much more respondents participated in the second study than in the first study.

Accordingly, the chosen methodology and direction of analysis, both theoretical and fiscal, allow us to identify the connection between the hypotheses presented in the study (taking into account the limitations) and the parallels of the possible outcome of the reform in all three countries. We can also compare these results with the results of the study conducted in Georgia.

3. Results and Discussion

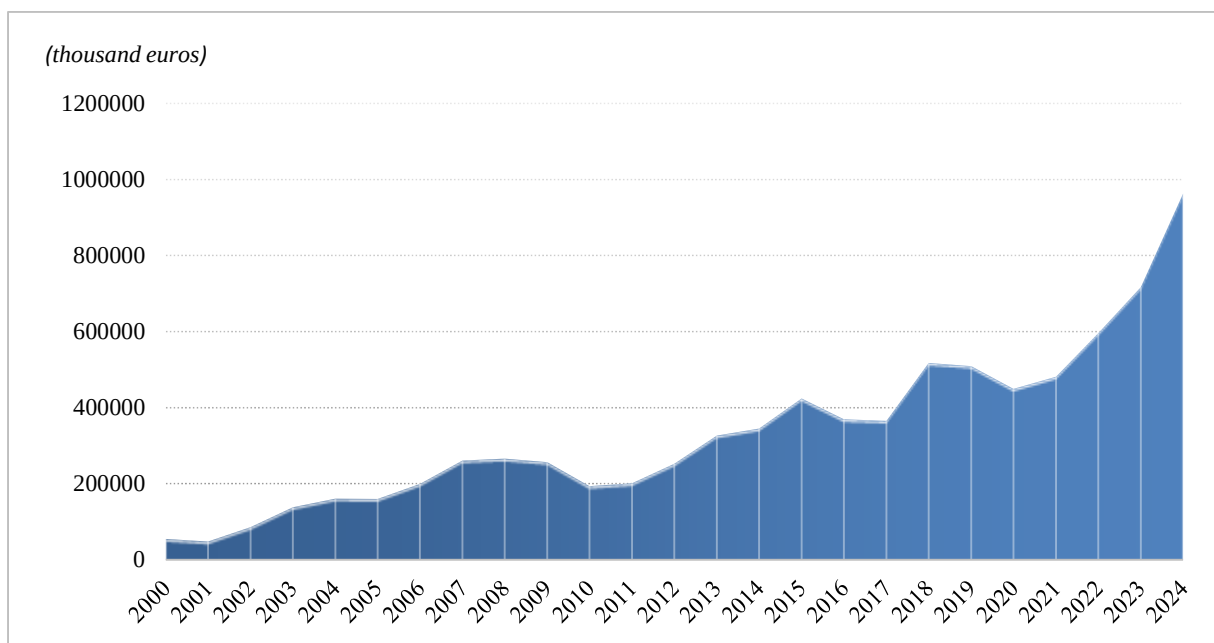
After a theoretical review, it is interesting to see what fiscal results these models have in both Estonia and Georgia (As for Poland, due to the fact that the mentioned model is newly implemented, there are not enough data for comparing financial indicators). In terms of revenues from profit tax in the budget, it is interesting to analyze the dynamics of the years, where the impact of the given model on the budget revenues is clearly visible. The most significant detail that these models have is that the reinvested profit is not taxed, which means that the budget will initially have a reduction in income in terms of profit tax. However, in the long term, the mentioned models should have a positive result, which should be expressed by the funds mobilized in the budget. In particular: before the introduction of the mentioned model in the budget, the share of profit tax in total tax revenues should be compared, and then it is necessary to evaluate the trend of the mentioned model in terms of income. Based on the fact that in Estonia this model has been in force since 2000, and in Georgia since 2017, this allows us to see its effect in the long term on the example of Estonia, while as for Georgia, only a short period of time can be evaluated based on only a few years. Naturally, it is impossible to see the full picture only according to the legislative records, because in this case, in addition to the legislative records, the change of the given tax rate in a given period of time is also affected; as well as willingness of taxpayers to voluntarily comply with tax legislation; Changes in the number of taxpayers/entrepreneurs and many other details.

When we analyze the given preferential model of profit tax, First of all, it is important how much funds will be mobilized in the state budget, i.e. whether the introduction of the preferential model can lead to a budget deficit at a certain level and if so, by what amount the revenues in the budget decrease. Therefore,

during this analysis, the most important thing is to see the trend of the profit tax coming into the budget, if it has been increasing since the first year, i.e., after the introduction of the preferential model, the amount of this tax entered the budget as much or more than before, it means that the budget did not cause a deficit. And if we have the opposite result, i.e. budget revenues have decreased after the introduction of this model, then if necessary, this deficit should be balanced. And at the same time, observe the trend when it returns to the initial indicator, that is, the indicator that existed before the introduction of the model.

If we look at the situation of both countries, Estonia and Georgia, in terms of budget revenues, we will see that after the introduction of the mentioned preferential model, the budget revenues from the profit tax have decreased (see Figures 1 and 2).

Figure 1: State budget tax revenues in corporate income tax (profit tax) in Estonia



Source: Statistics Estonia. Budget revenues. (Accessed: 12 August 2025)

Here it is already interesting to compare the trend and find the point/period in which time the given model manages to return to the level existing before the introduction of the model, in terms of budget incomes. If we take into account the fact that before the introduction of this preferential model in Estonia (in 1999), the budget revenues from this tax, i.e. the benchmark before the reform, were 107 million euros (*Unit: thousand euros*). Estonia returned to the mentioned pre-reform mark after 4 years and surpassed it since 2003 and approached the 200 million euros (*Unit: thousand euros*) mark. From 2004 to 2014, it doubled and reached the 400 million euros (*Unit: thousand euros*) mark. And as of 2024, it has increased several times and exceeded the 800 million euros (*Unit: thousand euros*) mark. Here, the positive result of this reform is clearly visible. Here, it is necessary to draw attention to the current economic crisis and also to the fact that after the

implementation of this reform, Estonia reduced the rate of profit tax from 26% to 20% (since 2015, the rate is already 20%). And, in the case of Georgia, the profit tax rate has not changed in the given period and is 15%. Based on a study conducted in 2009, Hazak concludes that „as a result of higher cash balances and lower exposure to risks related to excessive utilisation of loans and other external financing facilities, DPT (Distributed Profit Tax) appears to have a positive impact on companies' liquidity and sustainability. However, the downside of this taxation system appears to be the allocation of available funds into cash as a potentially inefficient way of investment“ (Hazak, 2009).

Masso and Meriküll (2011) offer an interesting conclusion about this reform – „developing economies seeking to increase the resources allocated to investment while facing credit constraints for firms may find decreasing the tax rate on retained earnings quite a useful policy option. First, increased investment rates lead to fewer resources left for consumption, which may lead to a transitory welfare drop. This is especially problematic for countries that are not well integrated into world capital markets and that primarily need to finance investment internally“ (Masso & Meriküll, 2011).

Interestingly, in Estonia, an increase in investment activity was observed in the period after the introduction of the mentioned reform. This is confirmed by Maso, Merikuli and Vahter (2013), whose study found that after the introduction of the distributed profit tax, corporate investment increased by 17.3%. The increase among the smallest entities was much more significant and amounted to about 62%. However, the researchers also emphasize that it is not known for sure to what extent the reform contributed to the increase in investment observed in Estonia (Masso et al., 2013).

The OECD, in its latest report on Estonia, highlights the following issues: the design of the corporate tax regime, coupled with the fact that high-income earners have a strong incentive to incorporate, given that their tax burden of over 40% is almost twice as high as the statutory 22% CIT, which is levied only on distributed profits.

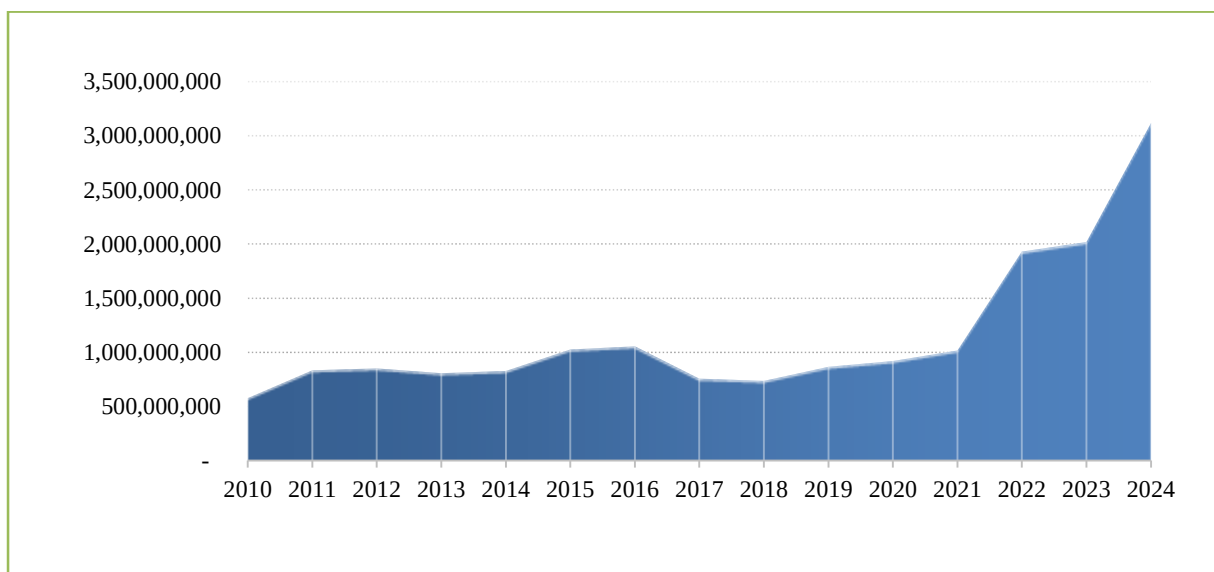
The firm-level assessment of the impact of the CIT change shows improvements in the liquidity and liabilities of Estonian firms after the reform, as well as in investment and productivity, although the assessment of the macroeconomic impact of the reform will require a more recent assessment, as previous studies have looked at a relatively short period. Furthermore, these studies do not consider broader impacts, fiscal implications, and do not compare alternative policies (OECD, 2026).

For the International Monetary Fund, the main reason it justifies this reform is that, „taxing rents and thus fully exempting investments is the economic rationale that justified the simplified CIT system adopted by Estonia in early 2000s“ (IMF, 2025).

Since economic rents represent profits in excess of required (normal) income, a corporate tax would not create any efficiency losses. At the corporate level, these “cash flow taxes” are based on the sources and

uses of funds, rather than on the profit and loss account. They are also preferable to the capital basis because they do not distort the dynamics of savings and investment over time. Evidence suggests that cash flow taxes have several desirable properties compared to standard CIT. Using the IMF's multi-regional GIMF model, Carton et al. (2019) analyze the effects of replacing standard CIT with cash flow taxes. They show that this type of reform increases output in the reforming country and has positive long-term effects on the rest of the world. The Estonian CIT is close to a cash flow tax on net economic rent, with some limitations, given that it is not based on the distribution of net profits. Some EU countries have considered moving from a standard CIT to a cash flow corporate tax in order to ensure tax neutrality for both financial and investment decisions and to encourage investment. However, such a structural reform of the CIT base carries significant revenue risks, especially in the transitional phase, as the statutory rate would need to be increased to maintain the revenue level unchanged (IMF, 2025).

Figure 2: State budget tax revenues in corporate income tax (profit tax) in Georgia



Source: State Treasury of Georgia. Budget revenues. (Accessed: 12 August 2025)

As for the trend of budget revenues from profit tax in Georgia, it returned to the level before the introduction of the Estonian model after 5 years, and from 2022, it surpassed the pre-reform level of budget revenues from profit tax. Unlike Estonia, we cannot compare data for more than 10 years here, but overall, if we look at Georgian data, the pre-reform benchmark was the share of profit tax in total tax revenues of 1 billion. After the reform, this figure almost halved, and this trend continued for several years, and by 2024 it had exceeded 3 billion, which means that the pre-reform figure had tripled. The positive result is also clearly

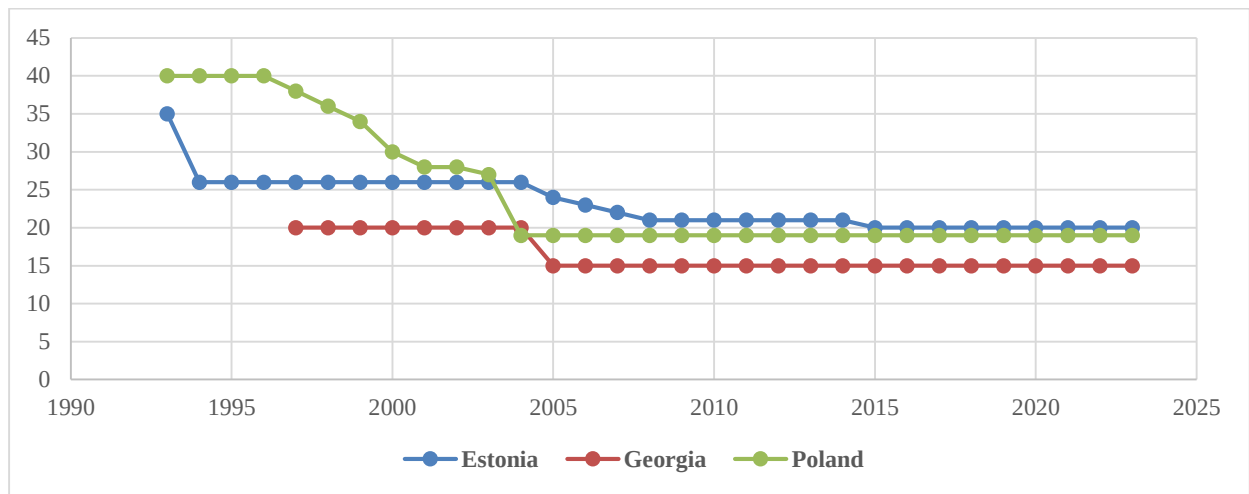
visible in the case of Georgia. It should be noted here that the profit tax rate has not changed. Attention should also be drawn to the fact that the introduction of this preferential model of profit tax in Georgia led to a decrease in budget revenues, which was balanced by an increase in the excise tax rate on certain types of goods.

In the very first year of the reform's initiation „Losses from corporate income tax reform (1.1 percentage points of GDP as the CIT changed from a profit to a dividend-distribution tax) and the compensating gains from higher excise rates (0.7 percentage points of GDP) were both lower than expected in 2017“ (International Monetary Fund, 2018).

The above hypotheses are confirmed by analyzing the given statistical data. In particular, in the long term, income from the profit tax in the state budget increases, while in the short term, this reform has the risk of causing a budget deficit in countries where this tax has a large share in the state budget (eg: Georgia) (Bukia, 2019b). This is due to the main essence of this reform, not to tax reinvested profits, because when reinvestment is carried out by entrepreneurs, which in turn leads to business expansion, initially such operations lead to a decrease in the funds mobilized in the budget (because they are not taxed), however, after a certain period of time (It takes on average 4–5 years), when the reinvested profits provide an opportunity to increase profits from their economic activities, this directly affects both the success of entrepreneurs and the state budget, as the income from profit tax in the budget increases.

If we look at the 30-year (1993-2023) trend of the change in the profit tax rates of all three countries (Georgia, Estonia, Poland), we will see that there is a decreasing trend in the given period (see Figure 3). In particular, the profit tax rate in Poland dropped from 40% to 19%. In Estonia, it fell from 35% to 20%. And in Georgia, it dropped from 20% to 15%. However, it should be noted that the lowest profit tax rate for the given period is in Georgia (15%).

Figure 3: Corporate income tax (profit tax) rates



Source: Tax Foundation. Tax rates. (Accessed: 12 August 2025)

This trend shows that countries are trying to ease the burden on taxpayers/entrepreneurs in profit tax both by reducing the tax rate and by exempting certain incomes from profit tax.

However, it is worth noting that Estonia has taken a different position on this issue since 2025, namely increasing the profit tax rate to 22% and plans to increase it to 24% by 2026 (Bolat & Jamroz̧y, 2025). It is also interesting to compare Estonia and Poland, both EU member states, using the same methodology presented by Eurostat (Statistical Office of the European Union). Based on data for 2016-2024, we can analyze the comparison of total tax revenues, the share of profit tax, and also the share of both of them in GDP (See table 2). The trend in the table shows that in the case of Estonia, the growth in total tax revenues as a share of GDP is recorded, just as the growth in the share of profit tax in GDP data is specifically visible. As for Poland, the decline in total tax revenues as a share of GDP is recorded and only in 2024 did it reach the pre-reform level, while, specifically, the analysis of the profit tax as a share data is uneven, although a generally decreasing trend is visible in the data. The table above allows us to say that, based on the processing of the available data (taking into account the limitations), the hypotheses presented in the article are confirmed. However, it should be noted once again that in the case of Poland, there is not enough time to assess the reform in depth.

Table 2: Main national accounts tax aggregates (Estonia and Poland)

Year	Estonia				Poland			
	Percentage of gross domestic product (GDP)	Total receipts from taxes and social contributions	Percentage of gross domestic product (GDP) - CIT	Taxes on the income or profits of corporations	Percentage of gross domestic product (GDP)	Total receipts from taxes and social contributions	Percentage of gross domestic product (GDP) - CIT	Taxes on the income or profits of corporations
2016	33.5	7435.1	0.2	38.2	34.1	145860.1	1.8	7833.7
2017	32.6	7922.3	0.2	40.4	34.7	162904.2	1.9	9011
2018	32.6	8622.6	0.3	71.2	35.4	178350.1	2.1	10401.3
2019	33	9398	0.3	93.6	35.4	190797.9	2.2	11775.6
2020	33.2	9260.3	0.3	81.9	35.9	190717.5	2.2	11900.1
2021	33.9	10659.7	0.3	95.5	37	215728.3	2.6	15023.9
2022	33	11992.3	0.3	111.6	34.7	229605.2	2.8	18302
2023	33.9	12999	0.5	185.8	35.7	268610.8	2.7	20032.8
2024	36	14346.2	0.5	206.4	37.4	317202.8	2.4	20315.6

Source: Statistical Office of the European Union. *Main national accounts tax aggregates* (Accessed: 21 August 2026).
note: Total receipts from taxes and social contributions (including imputed social contributions) after deduction of amounts assessed but unlikely to be collected, Million euro; Taxes on the income or profits of corporations - Million euro

Back in 2021, the World Bank focused on the issue of replacing capital expenditures with permanent accelerated depreciation in relation to Poland. In particular, the government should consider replacing the Estonian CIT scheme with permanent accelerated depreciation in capital expenditures/costs. If the introduction of the Estonian CIT is aimed at encouraging investment in productive capital, the government should consider alternative approaches that would achieve this goal more effectively and at a lower cost to the state budget. Replacing the Estonian CIT with permanent accelerated depreciation in capital expenditures (e.g., full depreciation in the first year of investment) is a more effective alternative than the government can consider in the future (World Bank, 2021).

„While there have been many studies on the effects of introducing taxation in the form of a DPT in other European countries, the Polish literature offers limited research“ (Dada & Dudziński, 2025). The results of a survey conducted among entrepreneurs in Poland by Dada & Dudziński indicate that the most common reasons for choosing this reform system are the reduction of the tax burden and the possibility of deferring tax liability until the moment of profit distribution (more than 90%). In addition, a significant proportion of the respondents cited the planned increase in financial liquidity as a motivating factor for changing the taxation method. The survey also includes the main question for the reform: whether they plan to reinvest - most subjects plan to use the saved funds for investments. The majority of respondents (63%) said that they would allocate these funds for investments (Mainly, 48.8% will be directed to long-term and 34.4% to medium-term

investments), while 30% answered that it is "difficult to say." (Dada & Dudziński, 2025).

In the above theoretical and fiscal overview, we have seen the approaches of the above countries in terms of legislation, as well as fiscal results in terms of budget revenues from profit tax. However, it is interesting here the attitude of taxpayers/entrepreneurs towards the given changes, whether the expectations of the state and entrepreneurs coincide. In this regard, it is interesting to conduct research regarding the expectations and results of this reform among taxpayers/entrepreneurs. To what extent the Estonian model of profit tax has become conducive to their activities, whether they have reinvested or not, what proposals can be made by them, which can be taken into account by the state. Therefore, it is important to have a relationship between the state and business to share information and ideas. It is interesting to conduct research in Estonia and Poland (The results of the above-mentioned survey of entrepreneurs in Poland conducted by Dada & Dudziński indicate that for 90% of entrepreneurs, the most common reason for choosing this reform system is the reduction of the tax burden and the possibility of deferring tax liability until the moment of profit distribution) and analyze the results. As for Georgia, around the issues listed above, I conducted research on the mentioned issues in two stages at different periods of time - in 2019 and 2023, and the obtained results can be compared with each other.

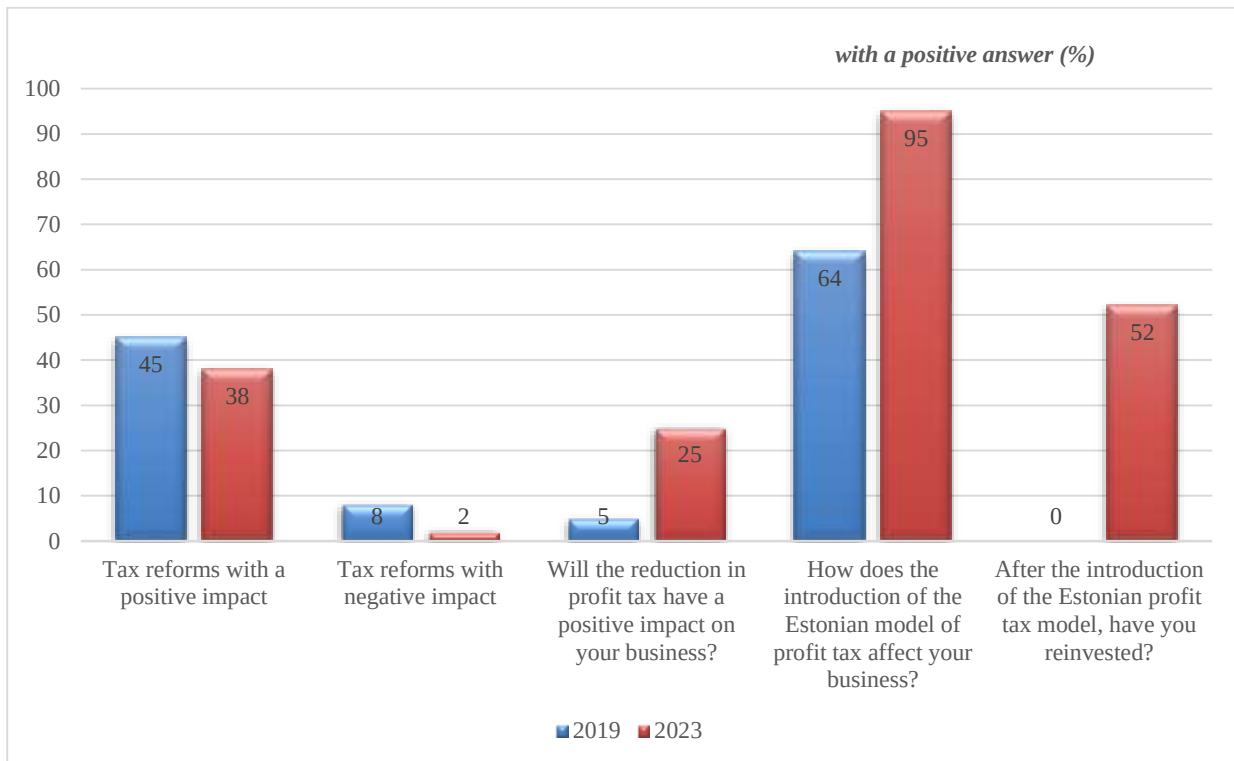
My research has generally covered the tax reforms of the last ten years and their effects, however, for the purposes of this article, the information obtained directly on the reform of the Estonian corporate tax model and their comparison is of interest. The main questions surrounding the mentioned reform included the clarification of such issues as:

- What is the impact of the introduction of the Estonian model of profit tax in their activities;
- The reform of the Estonian model of profit tax, when compared to other implemented reforms, according to entrepreneurs, is it a tax reform with a positive impact;
- The reform of the Estonian model of profit tax, when compared to other implemented reforms, according to entrepreneurs, is it among the tax reforms with a negative impact;
- In the opinion of entrepreneurs, which tax rate should be reduced in Georgia, which can have a positive impact on their activities (The answers indicate only the positive answers of the entrepreneurs who want to reduce the profit tax rate);
- And, in the 2023 survey, the main question was also added, whether reinvestment was carried out or not, after the introduction of this reform (this question was not included in the 2019 survey, because the implemented reform was introduced relatively recently, and therefore the research period was not sufficient).

The answers to these questions are compared to each other in terms of years. The percentages given

in the diagram (see Figure 4) show the percentage of positive answers to a specific question among the total surveyed taxpayers/entrepreneurs.

Figure 4: Research on the Estonian model of profit tax with entrepreneurs operating in Georgia



Source: own study

This study shows that according to entrepreneurs operating in Georgia, the reform of the Estonian model of profit tax has a positive effect on entrepreneurs, and the expectations of the state and entrepreneurs coincide to a large extent. In particular:

Among reforms with a positive impact - the reform of the Estonian model of profit tax has a positive response from 38 percent of entrepreneurs in 2023 (Bukia, 2023). If we take into account that the research included 6 implemented reforms, the given result indicates that this reform met the expectations of entrepreneurs. 45 percent of entrepreneurs had a positive answer to the same question in 2019 (Bukia, 2019a).

Among reforms with a negative impact - the reform of the Estonian model of profit tax was rated negatively by 2 percent of entrepreneurs in 2023 (Bukia, 2023). If we take into account that the study included 8 implemented reforms, this result is the best. When asked the same question in 2019, only 8 percent of entrepreneurs believed that the reform had a negative impact (Bukia, 2019a). According to this question, it can be seen that over time, fewer and fewer entrepreneurs think that the reform had a negative impact on their activities.

As for the question of reducing tax rates, it should be noted that Georgia has six taxes (income, profit, VAT, excise, import and property taxes) and 25 percent of entrepreneurs expressed their desire to reduce the rate of profit tax in 2023 (Bukia, 2023). Although the current profit tax rate in Georgia (15%) is one of the lowest rates in Europe. However, in 2019, only 5 percent of entrepreneurs wanted to reduce the profit tax rate (Bukia, 2019b).

Asked about the reform, how the reform of the Estonian model of profit tax has an impact on entrepreneurs, 95 percent of respondents evaluate it positively in 2023, which is clearly the best result (Bukia, 2023). As for the 2019 survey, 64 percent of the respondents positively evaluated the reform when asked the same question, although it should be noted that at that time the said reform had been implemented for 2 years, which did not allow all entrepreneurs to fully observe and evaluate. Therefore, 31 percent of entrepreneurs had a neutral position (rather than a negative one) when evaluating this reform (Bukia, 2019b).

As for the most important question surrounding this reform, which implies the implementation of reinvestment - as we mentioned, this question was not included in the 2019 study, because there was an insufficient analysis period. And in the 2023 survey, 52 percent of entrepreneurs noted that they reinvested after the implementation of this reform, and 42 percent intend to do so (Bukia, 2023).

In general, we can say that the reform carried out in Georgia was justified from the point of view of entrepreneurs, because a certain part of their income was exempted from profit tax. This is confirmed by the research of both stages among entrepreneurs. As for the mentioned reform from the side of the states, it refused a certain income in the budget for the benefit of the entrepreneurs, which in the case of the Georgian budget is quite a large amount. That is why we can say that the state's priority is to develop entrepreneurship and implement such reforms that will help them to expand their activities. This is intended for long-term development of entrepreneurs.

It should be said here that this reform is not widespread in the world and is limited to the example of only three countries. Among the study countries (Estonia, Georgia, Poland), for the purpose of analysis, Poland is represented for a short period after the reform, which does not provide a complete picture for comparison.

4. Conclusion

When evaluating this reform, we must take into account a number of factors. As we know, this reform was first introduced in Estonia, and later in Georgia and Poland. Naturally, the model introduced in Georgia and Poland is not identical to the reform introduced in Estonia (the priority of each country and its compatibility with other legislation is taken into account), however, the main essence of this reform, which is that reinvestment will not be taxed with profit tax, is identical in all three countries. This is a great support for

entrepreneurs who want to expand their activities, which in turn helps to create new jobs in the market. As for the rate of profit tax, over the last 30 years, it is distinguished by a decreasing trend in all three countries, however, after the implementation of this particular reform, only in Estonia the trend of decreasing the rate continued, while in Georgia and Poland the rates remained the same. However, here too we should draw attention to the fact that the given model in Estonia has been in force since 2000, in Georgia the mentioned model was introduced in 2017, and in Poland since 2021. Therefore, in contrast to Estonia, we cannot fully evaluate the given reform in the long term, on the example of Georgia (more or less) and Poland. The issue of reducing profit tax rates is absolutely a direction of tax policy and it is determined by the state based on the needs of the country. However, it should be said that among these three countries, Georgia has the lowest profit tax rate (15%).

As a result of the assessment of the legislative framework of the reform and the analysis of post-reform fiscal data, a certain relationship was identified between the events determined by the hypotheses (H1 and H2). The common characteristics suggest that these phenomena are interconnected and that examining them together is justified. And, the hypotheses formulated within the framework of the study have been confirmed (although it is worth noting that the study does not aim to establish a strict casual relationship). H1: The Estonian model of profit tax has a positive effect on budget revenues in terms of profit tax in the long term; H2: The Estonian model of profit tax can in the short term cause budget deficits for countries where the share of profit tax in total revenues is high. This means that in the short term the income from the profit tax decreases in the budget, while in the long term the income from the profit tax is characterized by an increasing trend. The mentioned hypothesis was confirmed when analyzing the statistical data of Estonia and Georgia. Where it is clearly seen that in the years following the introduction of this reform, the income from the profit tax in the budget decreases. In particular: in the case of Estonia, the trend of decreasing income from profit tax continued for about 4 years and then returned to the level it had before the introduction of the given reform, and the trend of the following years shows that income from profit tax has increased 6-7 times, which is definitely the best result. As for Georgia, like Estonia, in the years following the implementation of the reform, income from profit tax decreased in the budget. It took about 5 years for Georgia to return to the pre-reform level, and in the following years, a doubling of the pre-reform incomes was observed. However, we should note that the analysis period for long-term goals is insufficient in the case of Georgia (7 years after the implementation of the reform), in contrast to the example of Estonia (24 years after the implementation of the reform). As for Poland, considering that only 3 years have passed since the implementation of the reform, in this case the analysis of fiscal results for long-term goals does not show the full picture. However, the examples of Estonia and Georgia suggest that this hypothesis is likely to be true in the case of Poland as well.

As for the addressees of the implemented reform - entrepreneurs, it is natural that the interests of the

state and entrepreneurs should coincide in the best case. The research conducted by me in Georgia in two stages (which was carried out - in 2019 and 2023) shows that according to the majority of interviewed entrepreneurs, the introduction of the Estonian model of profit tax in Georgia is a reform with a positive impact and has a positive impact on their activities. As for the main purpose of this reform, to reinvest by entrepreneurs in order to promote their activities, more than half of the respondents have already reinvested after the introduction of the mentioned reform, while the rest of the entrepreneurs are going to reinvest. It should be noted that the research was purposefully conducted in two stages, in order to avoid positive expectations caused by the first impression and to obtain real results. Therefore, after a gap of 4 years, research was carried out again in the same direction, so that we could compare the views, expectations and results of the entrepreneurs with respect to the said reform. These studies have shown that the mentioned reform in Georgia has a pronounced positive impact on entrepreneurs, which in turn justifies the implementation of this reform on the example of Georgia.

As for implications - this study will be a recommendation for tax policy makers (Given the limitation). Also for any interested person who conducts research in this direction.

As for limitations, the generalizability of the results of the study conducted in Georgia to the entire country is limited, since despite the large number of respondents, there are many more entrepreneurs in the country. Therefore, a survey of entrepreneurs on a larger scale may have yielded different results. It is also worth noting that a certain number of entrepreneurs refused to participate in the survey. It would be interesting to conduct a survey on this reform in Estonia, and again in Poland, which would reveal the opinions of entrepreneurs.

In the future, in order to check and evaluate the dynamics, it is desirable to carry out a study of the course of this reform at certain intervals and compare the results with previous studies. It will also be very interesting to analyze the Polish fiscal data after a few years to see the real result of the reform and compare it with the example of Estonia and Georgia, to what extent the existing expectations have been justified in this regard.

In the end, we can say that this reform - the introduction of the Estonian model of profit tax - met the expectations both in Estonia and in Georgia. And in the case of Poland, its fiscal results will appear in a few years. If we take into account the fiscal data of the two countries, this allows us to assume that this reform will have the same effect in Poland as in Georgia and Estonia.

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CIVIL SMART DEFENSE IN THE WESTERN BALKANS: TOWARD A REGIONAL MODEL OF DISASTER RESILIENCE

ABSTRACT: *The increasing frequency and intensity of natural disasters in the Western Balkans — including the 2014 floods, the devastating 2019 earthquake in Albania, and the post-2021 wildfire seasons across the Adriatic — have simultaneously revealed growing response capacities and persistent structural gaps in cross-border disaster governance. While regional solidarity has strengthened and emergency support has been mobilized in several critical events, crisis management remains highly reliant on ad-hoc coordination, asymmetric institutional capacities, and external support from EU and NATO civil protection mechanisms. This study advances the concept of a Regional Civil Smart Defense Model for disaster resilience, grounded in shared operational capacities, integrated training systems, interoperable early-warning mechanisms, and depoliticized cross-border cooperation. Methodologically, the research employs comparative case analysis, institutional documentation, and data from regional and international emergency structures. Findings reveal a clear increase in mutual assistance — such as the deployment of over 30 international teams to Albania in 2019 and large-scale mobilization during the 2014 floods — yet highlight persistent deficits in interoperability, standardized procedures, and harmonized digital infrastructure. The study's main contribution is the conceptualization of regional resilience through a civil Smart Defense lens, where civil protection and security instruments converge to enhance mutual trust, reduce vulnerability, and accelerate Euro-Atlantic integration. It concludes with policy recommendations such as the establishing a Regional Joint Crisis Hub, a shared aerial firefighting fleet, a regional risk data platform, and a Regional Academy for Resilience and Civil Security, positioning the Western Balkans as a pilot region for integrated EU–NATO disaster governance.*

KEYWORDS: Western Balkans; smart defense; disaster management; cross-border cooperation; EU Civil Protection Mechanism; institutional resilience.

1. Introduction

Over the past decade, the Western Balkans has faced a series of high-intensity natural disasters with wide-scale humanitarian, economic, and security implications, putting to test the institutional capacities, civil protection systems, and regional cooperation mechanisms of the states in the region. The 2014 floods that struck Serbia, Bosnia and Herzegovina, and Croatia, the devastating 2019 earthquake in Albania, and the recurrent wildfire seasons across the Adriatic after 2021 illustrate a new operational reality: crises do not

recognize national borders, and effective response increasingly depends on integrated capacities, cross-border coordination, and shared risk-management infrastructure.

This vulnerability is compounded by structural factors including seismic exposure, accelerating climate shifts, rapid and often unregulated urbanization, and ageing critical infrastructure. According to UNDRR (2022), Southeast Europe experiences climate-related risk escalation at a rate above the European average, while World Bank assessments (2023) indicate that more than 60% of the urban population lives in zones highly exposed to floods and seismic hazards. Disaster management in this context is not only a humanitarian or development challenge, but also a core pillar of regional security and institutional stability.

Despite shared risks and similar vulnerabilities, crisis responses in the Western Balkans have historically been fragmented, constrained by asymmetrical capacities, lack of standardized procedures, and legacy political and administrative challenges. While EU member states rely on mechanisms such as the EU Civil Protection Mechanism, RescEU, and Copernicus, the Western Balkans' full integration into these structures remains ongoing, shaped by different membership statuses and uneven reform trajectories.

At the same time, recent crises have demonstrated that regional cooperation is both possible and operationally effective. The immediate support from Kosovo, North Macedonia, and Montenegro following Albania's 2019 earthquake, as well as coordinated interventions during the 2014 floods, exemplify practical solidarity that went beyond political symbolism. In Albania's case, over 30 international rescue teams and hundreds of emergency professionals were deployed (NCPA, 2020), confirming the importance of pre-established operational agreements and interoperable mechanisms. In this context, the Smart Defense concept — central to NATO's transformation through "pooling and sharing" — provides a valuable analytical and strategic lens for disaster resilience in the Western Balkans. Rather than maintaining isolated national capabilities, Smart Defense advocates for joint capacity development, resource pooling, standardized protocols, and coordinated training — all essential for readiness, rapid response, and post-crisis recovery.

Applying this philosophy to civil protection and disaster risk governance introduces an innovative model in which civil and security dimensions converge into a shared resilience ecosystem. This approach aligns with the logic of civil-military cooperation, reinforced after the COVID-19 pandemic and the war in Ukraine, where dual-use capabilities, military logistics, and inter-agency communication systems play a growing role in civilian emergency response.

Moreover, building shared crisis-management structures reinforces Euro-Atlantic integration by fostering trust, institutional credibility, and operational interoperability. Practical cooperation during crises has created depoliticized channels of coordination that can contribute to reducing tensions and strengthening long-term regional cooperation.

Against this backdrop, this study examines the role of cross-border cooperation in disaster management in the Western Balkans and proposes a Regional Civil Smart Defense Model for civil security — one that transcends political constraints through integrated, results-oriented operational architecture. The introduction is followed by a theoretical framework addressing risk governance, post-conflict cooperation, and the Europeanization of civil security, forming the analytical foundation for empirical case analysis and strategic policy recommendations.

Guided by the structural challenges and regional dynamics outlined above, the study seeks to identify whether cross-border cooperation has strengthened shared disaster-response capacities and whether a regional Civil Smart Defense model is viable. The central research question is: *To what extent cross-border cooperation has enhanced collective disaster-risk management capacities in the Western Balkans, and can a regional Civil Smart Defense model be developed for civil security?*

The hypothesis is that *cross-border cooperation has produced gradual progress and concrete success cases; however, the lack of standardized procedures, asymmetry of capacities, and political constraints continue to hinder the establishment of a full-fledged regional model — although such a model remains achievable through progressive institutionalization and deeper Euro-Atlantic integration.*

2. Theoretical Framework

The development of a regional Smart Defense model for disaster risk management in the Western Balkans rests on the intersection of three analytical paradigms: (i) risk governance and resilience theory, (ii) cross-border cooperation and post-conflict regional dynamics, and (iii) Europeanisation and multi-level integration frameworks. These perspectives conceptualize disasters not merely as natural events, but as complex governance and security challenges requiring coordinated institutional responses, shared capacities, and collective resilience.

Risk Governance and Resilience. Risk governance in international literature refers to the institutional capacity to identify, prevent, and manage risks through integrated systems and coordinated public structures (UNDRR, 2022). Boin et al. (2017) underlines that crisis management effectiveness depends not only on emergency intervention, but also on preserving public legitimacy, maintaining reliable communication, and fostering inter-institutional coordination. In parallel, Linkov and Trump (2019) define resilience as the ability to absorb shocks, adapt to disruption, and emerge stronger.

These dynamics are particularly salient in the Western Balkans, where crises frequently expose inherited institutional weaknesses, uneven technical capacities, and insufficiently harmonized emergency procedures. UNDRR (2022) estimates that the region has one of the highest disaster-loss-to-GDP ratios in Europe, with damages exceeding €25 billion over the past two decades. Regional scholars highlight resilience as a product

of gradual administrative professionalization and shared protocol building (Marinković, 2022), while Tanasescu (2021) notes that recent crises accelerated civil-protection reforms by pushing governments toward EU-aligned risk-assessment systems.

Recent developments indicate a shift from reactive to preventive and analytics-driven governance, supported by early-warning systems, geospatial monitoring, and digital emergency-management platforms. Yet, despite this progress, major gaps persist: World Bank (2023) data shows that only 35–40% of municipalities in the region maintain updated disaster-risk plans, and only a limited number employ advanced analytical systems. Modernization is underway but requires deeper investment, professional training, and harmonization with international standards.

Cross-Border Cooperation and Post-Conflict Dynamics. The Western Balkans remains influenced by the legacy of conflict, ethnic tensions, and initially low levels of institutional trust. In such environments, trust-building occurs incrementally, “not through declarations, but through cooperative practice and measurable outcomes” (Fagan & Sircar, 2021). Evidence from recent crises supports this logic: following Albania’s 2019 earthquake, Kosovo, North Macedonia, and Montenegro deployed search-and-rescue units within 24–48 hours, while over 30 international teams operated on the ground (NCPA, 2020). Similarly, the 2014 floods mobilized over 3,000 international responders in Serbia and Bosnia (Đorić & Antić, 2023; Subotić, 2018). Regional scholarship emphasizes that disaster cooperation functions as “functional diplomacy,” reducing political tensions through technical collaboration (Krasniqi, 2022; Petrović & Marković, 2022). Studies published in European security journals reinforce the argument that crises create windows of institutional opportunity, strengthening multi-actor governance and interoperability (Dimitrov, 2023; Ilie, 2022).

Europeanisation, Multi-Level Governance, and Smart Defense. Europeanisation is understood as the alignment of domestic policies with EU standards and institutional norms (Featherstone & Radaelli, 2019; Vachudova, 2019). In the domain of disaster risk management, this materializes through convergence with the EU Civil Protection Mechanism, participation in IPA III programs, deployment of Copernicus and RescEU assets, and involvement in NATO-EADRCC and Partnership for Peace training cycles (Mocanu, 2022; Popescu, 2023).

Keil & Stahl (2020) describe this phenomenon as “pre-accession functional integration,” whereby Western Balkan states adopt EU frameworks before full membership, enhancing operational readiness and interoperability. In this context, Smart Defense emerges as a core strategic principle rooted in NATO’s “pooling and sharing” logic — joint capability development, resource consolidation, standardization, shared training, and cooperative strategic investment.

Applied to civil security, this leads to a “civil-security Smart Defense” ecosystem in which emergency services, civil-protection agencies, and defense structures coordinate for shared resilience outcomes. UNDRR

(2022) and OECD (2022) emphasize that crisis governance is most effective where capacities are pooled and standardized. Still, regional empirical data shows an imbalance: participation in international exercises increased by approximately 25% after 2020, yet joint emergency investments account for less than 10% of regional security projects (EC, 2023).

Integrating the Three Dimensions. The intersection of risk-governance theory, post-conflict cooperation logic, and Smart Defense principles forms the conceptual foundation of this study. Risk governance highlights the transition from reaction to prevention and preparedness; cross-border cooperation reflects the evolution from ad hoc solidarity to institutionalized mechanisms; Smart Defense conveys the shift from fragmented national capacities toward shared capabilities and collective efficiency. A regional Smart Defense model could therefore reduce dependence on external intervention, strengthen operational autonomy, build political trust, and accelerate Euro-Atlantic integration.

This theoretical framework not only informs the empirical case studies but also establishes a strategic foundation for designing a scalable and institutionalized resilience architecture for the Western Balkans — enabling the transition from crisis-driven cooperation to a structured and sustainable regional security ecosystem.

3. Methodology

This research adopts a comprehensive methodological approach, combining comparative case study analysis with an in-depth review of strategic documents, official reports, international statistics, and academic literature positioned within three main theoretical traditions: risk-governance scholarship, European integration studies, and cross-border cooperation in post-conflict regions. This blended design enables the study not only to examine the technical dimension of disaster response, but also to understand institutional capacity, inter-state cooperation dynamics, and the political constraints shaping operational performance in the Western Balkans.

The case-study strategy follows the analytical framework proposed by Yin (2014), who argues that this method is particularly suitable when the researcher seeks to understand complex phenomena in their real-world context, especially where boundaries between the phenomenon and its environment are blurred. Accordingly, the study selects three representative crises: the 2014 regional floods, the 2019 Albania earthquake, and the 2021–2023 wildfire seasons across the Adriatic region. These cases were chosen due to their varied hazard profiles—hydrometeorological, seismic, and climate-driven—different levels of international mobilization, and differing degrees of cross-border coordination. This enables the identification of shared patterns and structural differences, providing a robust basis for evaluating existing mechanisms and the potential for a regional Smart Defense model.

Data sources include civil-protection authority reports from Albania, Kosovo, North Macedonia, Serbia, Bosnia and Herzegovina, and Montenegro, as well as documentation from the European Union, particularly from DG ECHO, IPA III programs, and RescEU initiatives. Complementary evidence was drawn from NATO's Euro-Atlantic Disaster Response Coordination Centre (EADRCC), UNDRR assessments, OECD risk-governance reports, and World Bank disaster-impact data. The triangulation of institutional reports, quantitative indicators, and scholarly research ensured balanced interpretation and avoided over-reliance on government-reported performance metrics.

The analytical framework examines three dimensions of preparedness and cross-border cooperation: institutional coordination, technical interoperability, and political trust. For each axis, the study evaluates planning and command structures, standardization of procedures and information sharing, and the degree of mutual operational support. This approach moves beyond normative policy review and prioritizes the practical performance of civil-protection systems, highlighting mismatches between legislative frameworks and functional implementation under crisis conditions.

A key component of the methodology involves assessing the role of EU and NATO mechanisms as catalysts for regional cooperation. This is essential given that collaboration in the Western Balkans is strongly influenced by the European integration process and the presence of international institutional actors. For instance, DG ECHO data indicates that the activation rate of the EU Civil Protection Mechanism by Western Balkan countries increased by approximately 40% after 2019, while participation in joint regional exercises reportedly tripled between 2020 and 2023 according to NATO-EADRCC figures. Integrating such statistics provides both empirical grounding and insight into evolving regional capacities.

The study also applies discourse analysis to official government narratives and strategic planning documents, evaluating whether political rhetoric around cooperation translates into concrete institutional practice. This includes examining municipal emergency plans, professional certification levels among firefighting and rescue teams, and the presence or absence of integrated digital crisis-management systems. By comparing stated commitments to operational behaviors, the methodology reveals the gap between paper-based preparedness and practical readiness.

One methodological limitation lies in the absence of harmonized data across all Western Balkan countries for several operational indicators. While international organizations provide estimates, some states do not publish detailed statistics on deployment times, cross-border resource mobilization, or local-level emergency capacities. To address this, the study utilized multiple verification sources and cross-referenced institutional reports with independent assessments and academic research, ensuring analytical coherence and avoiding inflation of institutional capacity claims.

Additionally, the methodology includes a normative component assessing the feasibility of applying Smart

Defense principles in civil-protection systems. Unlike traditional security models that concentrate on national capacities, this study tests whether a regional environment supports shared capability pools, joint aerial firefighting fleets, standardized training pipelines, and interoperable digital systems. In this sense, the research design is both analytical and formative, mapping current capacities while outlining pathways toward institutionalized regional resilience.

In conclusion, the methodological approach offers a rigorous analytical foundation to evaluate the current state of regional disaster-risk cooperation in the Western Balkans and to critically test the applicability of Smart Defense logic to civil-protection structures. Through the triangulation of empirical data, scholarly literature, and institutional reporting, the study seeks to inform strategic policy design and to support the development of shared capabilities that enhance collective security and accelerate functional integration toward a resilient regional civil-security architecture.

4. Case studies analysis

This study examines how cross-border cooperation in the Western Balkans has evolved toward a more integrated approach to disaster risk management. Three major crisis events were selected as representative cases: the 2014 floods affecting Serbia, Bosnia-Herzegovina, and Croatia; the 2019 earthquake in Albania, which triggered immediate support from Kosovo, North Macedonia, and Montenegro; and the widespread wildfires between 2021–2023 across Albania, Montenegro, Croatia, and Greece. These crises provide concrete evidence of regional interaction, revealing both emerging capacities and persistent structural gaps.

Cross-border assistance during these events demonstrated the region's potential for practical solidarity, often overcoming political sensitivities and historical divisions. At the same time, uneven institutional capacities, limited interoperability, and the absence of harmonized early warning and operational systems continue to constrain the effectiveness of joint responses. Together, these cases form the empirical foundation for advancing a regional resilience framework and operationalizing the Civil Smart Defense concept in the field of civil protection.

4.1. The 2014 Floods: A Turning Point for Regional Risk Awareness

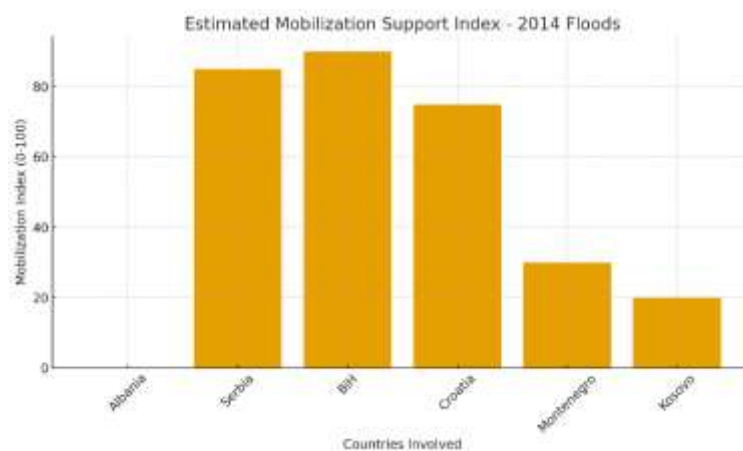
The catastrophic floods of 2014 represent a pivotal moment in regional awareness regarding the importance of cross-border cooperation in the Western Balkans. Extreme rainfall and rapid swelling of the Sava and Drina rivers resulted in unprecedented devastation, affecting over two million people and causing approximately 80 fatalities, with economic losses estimated at nearly €3 billion (UN OCHA, 2015; World Bank, 2015). The event exposed the limits of national emergency capacities and tested institutional ability to manage mass evacuations, widespread infrastructure damage, and emerging public-health risks.

In Serbia, the military and emergency services mobilized rapidly, yet response structures faced equipment shortages and gaps in centralized coordination (Government of Serbia, 2014). Bosnia and Herzegovina, characterized by a highly fragmented administrative system, experienced significant delays in resource distribution and inter-agency communication, illustrating the governance challenges of decentralized crisis management (OSCE, 2015). Croatia—then an advanced EU candidate—demonstrated comparatively stronger technical and logistical capacity but still relied heavily on cross-border support and activation of EU civil-protection mechanisms (DG-ECHO, 2016).

International mobilization was a defining feature. More than 3,000 international responders, including EU and NATO teams, were deployed (European Commission, 2016). Early-warning systems proved insufficient, while the absence of harmonized communication protocols hindered early evacuation planning (UNDRR, 2022). These weaknesses accelerated EU efforts to strengthen regional resilience and highlighted the strategic need for shared capacities (EC, 2017; NATO-EADRC, 2015).

Cross-border support blended community solidarity with structured international intervention. Serbia, for instance, received specialized engineering assistance for dam and riverbank stabilization (World Bank, 2015). Local civic mobilization was also crucial, reflecting strong social capital in emergency response (Đorić & Antić, 2023).

Despite this, critical weaknesses persisted, including outdated hydrological modelling, weak spatial planning enforcement near waterways, and the absence of a joint flood-information and risk-monitoring system (OECD, 2022). Thus, the 2014 floods catalyzed a strategic shift toward institutionalized regional crisis cooperation, marking the Western Balkans' entry into a shared-resilience logic aligned with the “pool-and-share” principle (Keil & Stahl, 2020).



As illustrated in **Figure 1**, the level of cross-border support during the 2014 floods was highest among Serbia, Bosnia and Herzegovina, and Croatia, reflecting a coordinated emergency response and strong engagement

through the EU Civil Protection Mechanism. In contrast, Albania and Kosovo played a more limited role in the early intervention phase, largely due to comparatively lower institutional and operational capacities at that time.

4.2. The 2019 Albania Earthquake: Regional Solidarity and Multilateral Crisis Management

The 6.4 magnitude earthquake that struck Albania on 26 November 2019 was the most severe seismic event in the country since 1979, and among the strongest recorded in the Western Balkans in recent decades. The disaster resulted in 51 fatalities, over 900 injuries, and left nearly 17,000 people homeless, while economic losses exceeded €985 million (Government of Albania, 2020; World Bank, 2020). The earthquake tested Albania's emergency response system as well as regional and international solidarity mechanisms.

Domestically, the National Civil Protection Agency and the Armed Forces mobilized immediately, yet the early response revealed shortages in heavy USAR (Urban Search and Rescue) equipment, limited logistical capacity, and non-standardized information-sharing protocols (NCPA, 2020; AASF, 2021). Firefighting units and police forces deployed rapidly, though gaps in advanced training and rescue capabilities became apparent within the first hours.

A defining feature of this crisis was the rapid mobilization of neighbouring states. Kosovo, North Macedonia, and Montenegro deployed specialized search-and-rescue teams within 24–48 hours, signaling a high level of regional solidarity and operational readiness (Krasniqi, 2022; Petrović & Marković, 2022). Italy, Greece, and Turkey provided advanced USAR units, while the EU Civil Protection Mechanism coordinated the arrival of more than 30 international teams (DG-ECHO, 2020; European Commission, 2021). NATO structures also facilitated logistical support and situational-awareness exchange (NATO-EADRCC, 2020). Albania became a practical laboratory of integrated civil-military and multilateral crisis cooperation. Previous EU and NATO exercises contributed to tactical interoperability, although procedural and communication challenges remained visible (Ilie, 2022; Dimitrov, 2023). The donor coordination platform and EU-supervised reconstruction process established a precedent for multi-stakeholder recovery planning, combining state budgets, solidarity funds, and international assistance in a unified operational framework (EC, 2021; UNDP, 2021). An important dimension of this case was the mobilization of dual-use capacities. The Albanian Armed Forces and regional partners played a crucial role in logistics, demonstrating the effectiveness of a Smart Defense approach in civil emergencies (MoD Albania, 2021; Vokshi, 2022). Digital damage-assessment systems supported by the EU and World Bank enabled data-driven decision-making, setting a valuable standard for crisis analytics in the region (World Bank, 2021).

Nevertheless, the earthquake exposed persistent gaps in domestic capacity, the need for unified oper-

ational standards, and the urgency of modern seismic-monitoring and early-warning systems. It also underscored that in the absence of fully developed national capabilities, regional and international networks remain essential, strengthening the case for a structured Civil Smart Defense framework for disaster-risk management in the Western Balkans.

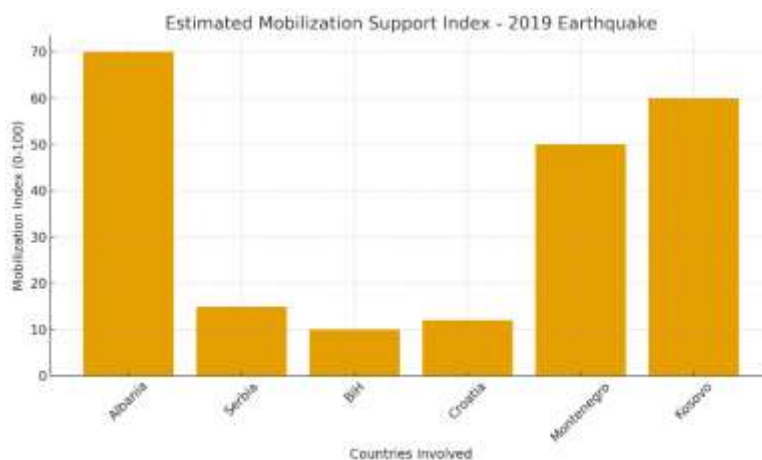


Fig.2. Source: Author's elaboration based on NCPA (2020), DG-ECHO (2020), World Bank (2021), and national civil-protection reports. As illustrated in Figure 2, the trajectory of immediate assistance to Albania following the 2019 earthquake demonstrates a significant rise in regional solidarity, particularly from Kosovo and Montenegro, highlighting strengthened operational capacities and improved cross-border coordination mechanisms (NCPA, 2020; Krasniqi, 2022; DG-ECHO, 2020).

4.3. Adriatic Wildfires (2021–2023): Air Capabilities and Climate Resilience Challenges

The wildfire seasons of 2021–2023 marked a new phase of climate-stress exposure in the Western Balkans and the Adriatic basin, affecting Croatia, Albania, Montenegro, Bosnia and Herzegovina, and Greece. Extreme temperatures, prolonged droughts, and strong winds created ideal conditions for rapid fire propagation, while uncontrolled forest terrain and limited aerial firefighting capacity intensified the scale and cost of the crisis (EFFIS, 2022; UNDRR, 2023).

In Albania, the 2021 season recorded over 1,000 active fire hotspots, including in protected natural areas such as Karaburun and Llogara (NCPA, 2022). Montenegro experienced similar pressure around Ulcinj and the Prokletije/Bjeshkët e Nemuna massif, while Croatia—traditionally the most capable in the region—mobilised its Canadair fleet yet still requested support from European partners (MUP Croatia, 2022; Đorić & Antić, 2023). According to EFFIS data, 2021 ranks among the worst years for burned land in the Adriatic corridor, with thousands of hectares affected.

This episode placed aerial capacity at the center of regional climate-emergency defence. For years,

Western Balkan states have relied on Croatia's Canadair fleet, as well as Italian and Greek assets, alongside RescEU support mechanisms (DG-ECHO, 2022). In multiple high-risk episodes, aircraft from Italy and Greece intervened in Albania and Montenegro, demonstrating operational "pooling and sharing" of assets and the importance of coordinated cross-border deployment (Krasniqi, 2022; Popescu, 2023).

However, reliance on external fleets exposed critical vulnerabilities. Response often faced delays due to simultaneous multi-country demands, aircraft availability constraints, and intergovernmental coordination requirements. The absence of domestically owned aerial firefighting fleets, combined with delayed modernization and fragmented logistics systems, confirmed that the region cannot indefinitely depend on external support for climate-driven emergencies (OECD, 2022; Vokshi, 2022).

On a positive note, field cooperation and joint training increased significantly after 2021. Regional civil-protection agencies reported more than 20 joint exercises and multiple new certifications for emergency responders during 2021–2023 (NCPA, 2023; MoD Albania, 2022). Furthermore, the Copernicus satellite system was widely used for real-time fire surveillance and early-warning, highlighting technology's expanding role in climate-risk management. Overall, the Adriatic wildfire crises demonstrated that climate shocks require a shift from ad-hoc response to sustained regional capability-building, investment in digital platforms, shared aerial resources, and advanced monitoring infrastructure.

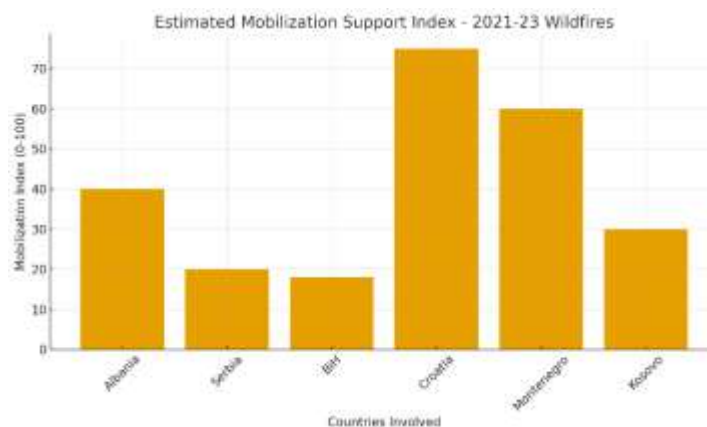


Figure 3. Cross-border aerial support and wildfire response missions in the Adriatic region (2021–2023). *Source: Author's elaboration based on data from EFFIS (2022), European Commission (2023), NATO-EADRCC (2023), NCPA (2022; 2023), and national civil-protection reports (Croatia, Montenegro, Albania).*

As illustrated in **Figure 3**, Croatia and Montenegro expanded their role in wildfire-response missions between 2021–2023, particularly through aerial support and cross-border assistance, reflecting advances in technological readiness and alignment with NATO/EU rescue coordination structures (European Commission, 2023; NATO-EADRCC, 2023).

4.4. Comparative Reflection and Lessons for a Regional Smart Defense Model

The three analyzed cases — the 2014 floods, the 2019 Albania earthquake, and the 2021–2023 Adriatic wildfire seasons — reveal a significant evolution in regional security culture: solidarity exists and emerges strongly in practice, yet it remains insufficiently embedded in a formal institutional architecture. Cross-border support was decisive in all cases, confirming Boin et al.’s (2017) argument that effective crisis management depends not only on emergency response but also on institutional coordination capacity. However, cooperation largely manifested as spontaneous reaction, driven by situational political will rather than harmonized protocols or a stable regional mechanism (UNDRR 2022; OECD 2022). Persistent asymmetries in equipment, aerial firefighting resources, and technical expertise — alongside the absence of a joint fleet and limited early-warning and information-sharing systems — highlight the lack of a formalized “pooling and sharing” model consistent with the frameworks proposed by Linkov & Trump (2019) and Keil & Stahl (2020).

At the same time, these emergencies demonstrated that crisis response has functioned as a bridge for cooperation transcending political divides and historical tensions. This supports the observations of Fagan & Sircar (2021) and Petrović & Marković (2022) that crises can generate new collaboration spaces independent of political climate. In several cases, mutual assistance produced “de facto technical diplomacy”, fostering practical trust where formal dialogue remains fragile (NATO 2023; NCPA 2023).

The lessons are clear and provide a solid foundation for advancing a regional Smart Defense model in disaster risk management. Demonstrated solidarity indicates strong potential for structural consolidation, while emerging technological capabilities — including satellite systems like Copernicus and AI-enabled risk assessment — create new opportunities for prevention and coordinated response (European Commission 2023; UNDP 2023). Additionally, the critical contribution of armed forces in emergency support reinforces the dual-use logic and the need for civil-military interoperability, aligning with Subotić’s (2020) argument that institutional modernization requires multi-level synergies. Progressive alignment with EU and NATO mechanisms ensures standardization and professionalization, reflecting what Europeanisation literature describes as the “internalization of practices” through functional cooperation (Featherstone & Radaelli 2019; Stoica 2022). Overall, the comparative reflection highlights that multilateral cooperation has not only been instrumental to operational effectiveness but has also generated political and social capital, strengthening the foundations for an integrated civil-security ecosystem and resilience architecture in the spirit of Smart Defense.

5. Discussion

The case study analysis demonstrates that the Western Balkans is transitioning from a crisis-management paradigm characterized by reactive, ad-hoc responses toward a more structured, interdependent, and institutionalized model of risk governance. However, this transition remains uneven and nonlinear; it is frequently disrupted by unequal institutional capacities, political tensions, lack of technical standardization, and reliance on external assistance — primarily from the EU and NATO. This hybrid trajectory aligns with Boin et al. (2017), who argue that institutional resilience depends not solely on technical capabilities but also on public trust, inter-actor cooperation, and organizational cultures of long-term planning.

Resilience as a process rather than a static capacity. International literature emphasizes that resilience is measured not only by response capacity, but also by recovery and transformation processes (Linkov & Trump, 2019). Evidence from Albania after the 2019 earthquake and from Serbia and Bosnia and Herzegovina after the 2014 floods shows that multilateral recovery efforts coordinated with European partners and international financial institutions created conditions for structural reforms — including new construction standards, protection agencies, and formalized regional partnerships (World Bank, 2021; EC, 2023). Yet regional studies indicate that such reforms often remain partially formal, with limited implementation due to politicization, lack of professional staff, and fiscal constraints (Krasniqi, 2022; Marinković, 2022). This reflects Subotić's (2020) argument that Europeanisation in the region often results in “superficial compliance,” where regulations are adopted but not fully operationalized.

Regional coordination: real solidarity without a shared architecture. The analyzed events reveal genuine operational solidarity across neighbouring states — visible in rapid support and deployment during major crises. This confirms Petrović & Marković's (2022) observation that civil security functions as a domain of functional diplomacy capable of transcending bilateral disputes. It also aligns with Fagan & Sircar (2021), who emphasise the value of “minimal functional trust” in fragile post-conflict regions.

However, the absence of a formalized regional mechanism constrains this potential. OECD (2022) and UNDRR (2022) note that while Southeast European states have improved domestic emergency systems, interoperability remains partial and inconsistent. Establishing a joint crisis coordination center, shared aerial firefighting fleet, and standardized response protocols therefore appears as a strategic necessity, not an optional cooperative preference.

Technology, digitalization, and AI in emergency governance. A transformative dimension of modern risk governance lies in digital systems, big data, artificial intelligence, and satellite monitoring. Platforms such as Copernicus, EFFIS, and the EU Emergency Response Coordination Centre (ERCC) have been essential for situational awareness and decision-making. Yet recent research shows that technological adoption in the region is uneven, shaped by investment levels, digital infrastructure, and staff capacities (Ilie, 2022; Dragoescu

& Gherghina, 2023). Without parallel institutional reforms, such technologies risk creating “artificial resilience,” where systems appear modern but remain fragile in practice. Therefore, integrating AI-based early-warning systems, regional climate-risk research, and specialized training for emergency personnel is essential to ensure that digital transformation translates into operational resilience.

Political context and trust-building. The Western Balkans remains influenced by political instability, interstate mistrust, and geopolitical competition involving Russia, China, and Turkey (Bechev, 2019; Dimitrov, 2023). This makes emergency management a sensitive arena in which technical cooperation and depoliticization are essential. Success cases like Albania’s 2019 earthquake response demonstrate that trust can grow significantly when outcomes are visible and measurable on the ground. However, persistent tensions, such as those between Kosovo and Serbia, create a complex environment where technical cooperation must continually balance diplomatic constraints and competing strategic interests. As Keil & Stahl (2020) note, “functional integration” in the Balkans often occurs independently of political integration, yet still advances institutional strengthening and governance modernization.

Toward a regional Smart Defense model for civil security. The applicability of Smart Defense principles to civil protection receives both theoretical and empirical support in this study. Smart Defense — grounded in shared capabilities, standardization, and coordinated resources — aligns with Perkmann’s (2003) conceptualization of cross-border cooperation as a mechanism for institutionalization and efficiency. It is also consistent with EU practices, where shared fleets, joint emergency hubs, and integrated data platforms have produced higher operational performance and reduced long-term costs. In this context, a Western Balkans Smart Defense model is not simply an academic proposal, but a strategic necessity — a pragmatic tool to reduce risks, share costs, and accelerate Euro-Atlantic integration (Kovačević & Đurović, 2021; Risteska & Zoran, 2020).

The COVID-19 pandemic and the Ukraine crisis renewed EU emphasis on “strategic preparedness and resilience,” reinforcing the centrality of shared capacities (EC, 2023; UNDRR, 2022). This situates the Western Balkans at a pivotal moment: the region can build a joint civil-security architecture that not only addresses natural hazards but also serves as a stabilization instrument, enhancing institutional legitimacy and political modernization. By operationalizing Smart Defense in the civil domain, the Western Balkans could transition from episodic crisis solidarity toward a sustainable resilience system — where interoperability, shared resources, and trust become embedded pillars of regional security governance.

7. Recommendations and Conclusion: Toward a Smart Regional Defense Model for Disaster Management

Building a sustainable regional model for disaster risk management in the Western Balkans requires

a shift from reactive solidarity toward institutionalized and integrated capabilities. To date, regional cooperation has largely emerged in response to major crises, driven by goodwill and ad-hoc solidarity rather than embedded operational structures (Boin et al., 2017; UNDRR, 2022). This aligns with risk governance scholarship emphasising that resilience must rely on durable systems rather than episodic intervention capacity (Linkov & Trump, 2019).

The proposed concept of Civil Smart Defense adapts the Euro-Atlantic principle of *pooling and sharing* to the civil-protection domain, combining national strengths to create shared capacity (Keil & Stahl, 2020). This approach rests on three fundamental pillars:

1. Shared operational assets,
2. Integrated training and certification pipelines, and
3. Interoperable digital and early-warning infrastructure.

Such a framework would reduce operational costs, strengthen technical interoperability, and reinforce trust both institutionally and politically (Fagan & Sircar, 2021; Petrović & Marković, 2022).

Institutional Architecture. A core recommendation is the establishment of a Regional Crisis Management Coordination Centre, functioning as a hub for multi-state emergency planning, intelligence exchange, and joint operational command — reflecting coordination models seen in EU and NATO systems (European Commission, 2023; NATO, 2023). Shared Aviation and Logistics Capacity. The creation of a regional aerial-fire-fighting and emergency aviation fleet represents another strategic priority. Every major disaster in the past decade — floods, wildfires, earthquakes — exposed the region’s reliance on external aviation assets. Shared aircraft and logistics bases would improve response times and reduce structural dependence on external partners.

Regional training and professionalization. A Regional Academy for Civil Protection and Emergency Response should be established to harmonize training standards, conduct joint exercises, and develop interoperable doctrines and certification pathways (Marinković, 2022). Joint learning experiences would accelerate the alignment of local professionals with European operational standards, strengthening civilian-military coordination and enhancing institutional culture.

Digital Integration and Intelligence Systems. In line with evolving EU resilience frameworks, the model calls for a regional early-warning and risk-analysis platform, leveraging AI-enabled prediction tools, satellite imagery (Copernicus), and geospatial systems to achieve unified situational awareness and synchronized response (UNDP, 2023; OECD, 2022). This would also support *data-ready governance*, enabling predictive decision-making and coordinated crisis communication.

Overall, the Western Balkans has demonstrated significant *crisis solidarity* but lacks a systemic architecture to transform episodic cooperation into structured resilience. The Civil Smart Defense model offers

a pragmatic, scalable pathway to operational coherence, cost-effectiveness, and shared preparedness. More importantly, it positions disaster-risk cooperation not only as a humanitarian imperative but as a strategic instrument of regional stability and Euro-Atlantic convergence. Strengthening shared capabilities would decrease dependence on external assistance, build political trust, and foster an integrated security ecosystem capable of facing accelerating climate and seismic threats.

In a region where security and political dynamics remain sensitive, civil-protection cooperation provides a uniquely depoliticized entry point for sustainable trust-building and strategic transformation. The Western Balkans now stands at a decisive inflection point: by institutionalizing Civil Smart Defense, it can transition from reactive mutual aid to a proactive, networked, and future-ready resilience architecture — advancing both human security and long-term regional integration.

Below is the conceptual diagram for the proposed “Civil Smart Defense” Model for the Western Balkans. It visually links three strategic pillars (shared assets, shared training, shared digital systems) to a Regional Crisis Hub, which then leads to Integrated Response & Resilience.

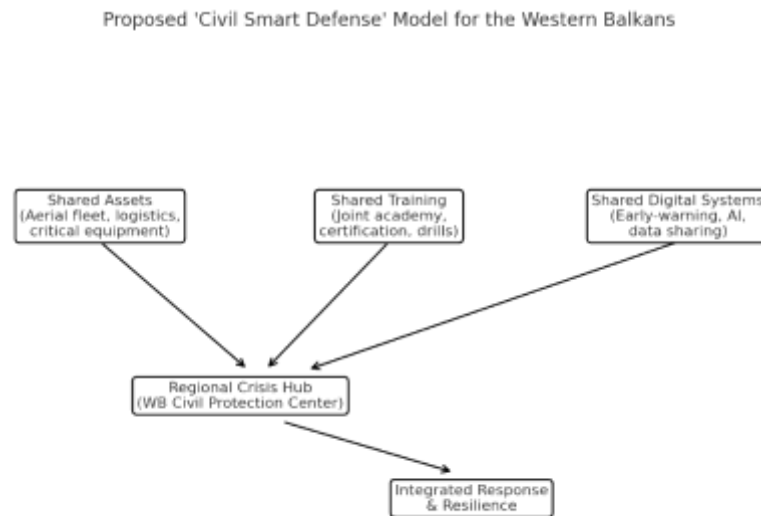


Figure 4. Proposed “Civil Smart Defense” Model for the Western Balkans

This structure not only enhances response capacity but also generates political stabilization effects by creating technical cooperation channels even during periods of tension or absence of formal dialogue between governments (Subotić 2020; Stoica 2022). Such functional diplomacy aligns with the logic of gradual, bottom-up integration, particularly effective in post-conflict regions (Bechev 2019; Fagan & Sircar 2021).

To ensure the practical implementation of this model, key recommendations include deeper participation in

EU and NATO civil-protection mechanisms, the establishment of a joint early-warning and situational-awareness hub, development of shared procurement and maintenance procedures, standardization of civil-military interoperability doctrine, and active involvement of local communities in preparedness and response systems. These measures are essential to shift cooperation from episodic solidarity to systemic resilience, turning the Western Balkans into a region that is both secure and functionally integrated with the European civil-security architecture.

8. Executive Summary

The evolution of disaster risk management in the Western Balkans demonstrates that natural hazards serve as a complex stress test for state capacities, political cohesion, and the ability to operate in a coordinated manner. The 2014 floods in Serbia, Bosnia and Herzegovina, and Croatia, the devastating 2019 earthquake in Albania, and the wildfire seasons of 2021–2023 across Albania, Montenegro, Croatia, and Greece revealed that disasters transcend administrative boundaries and challenge the region's security architecture. Immediate cross-border assistance—often surpassing political constraints and historical tensions—highlighted a tangible potential for practical solidarity. However, limited operational standardization, fragmented protocols, and the absence of permanent shared-resource mechanisms continue to constrain collective effectiveness.

Within this context, the concept of Smart Defense, adapted from NATO doctrine, offers a robust framework for shifting from ad-hoc emergency cooperation to institutionalized regional resilience. The philosophy of pooling and sharing, joint investments, dual-use capabilities, and shared technological and human resources provides a pragmatic path toward enhanced autonomy, cohesion, and operational readiness. Growing participation in EU and NATO civil-protection mechanisms, the expanded use of advanced systems such as Copernicus and RescEU, and increased participation in multinational training exercises already signal a positive trajectory toward functional integration.

The findings suggest that the Western Balkans can serve as a strategic laboratory for emerging EU–NATO cooperation in civil security. If existing solidarity is formalized, advanced technologies integrated, and shared standards systematically adopted, the region can evolve into a sustainable resilience platform—contributing not only to regional security, but also to the broader Euro-Atlantic security architecture.

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TRANSFORMATIONAL PUBLIC GOVERNANCE FOR UKRAINE'S ECONOMIC RECOVERY: A CONCEPTUAL FRAMEWORK, SCENARIO-BASED FORECASTING AND STRATEGIC IMPERATIVES

ABSTRACT: *Ukraine's recovery requires not only large-scale reconstruction financing but also governance arrangements capable of converting resources into resilient, inclusive and productivity-enhancing transformation. This article develops a conceptual framework of transformational public governance for Ukraine by integrating four mutually reinforcing dimensions: multi-level decentralisation and institutional modernisation, integrated digital transformation, public-private co-operation and investment mobilisation, and inclusive and accountable institutions. The study combines institutional and comparative analysis with an exploratory scenario-based forecasting exercise using macroeconomic panel data for Ukraine and selected European countries. The quantitative component employs OLS and Random Forest models based primarily on investment and inflation variables. Governance-related variables considered in the initial specifications were excluded because of severe multicollinearity and model instability; accordingly, the forecasting results are not interpreted as estimates of the causal effect of governance reforms on GDP growth. Backtesting instead reveals substantial forecast error for Ukraine under wartime conditions, demonstrating the limits of conventional models in the presence of structural breaks. The article's principal contribution is therefore conceptual and policy-oriented: it separates governance-capacity indicators from economic recovery outcomes, links institutional transformation to a phased implementation architecture, and shows how scenario analysis can inform policy without overstating causal inference. The framework positions governance quality as an enabling condition for reconstruction effectiveness, investment absorption, institutional resilience and long-term convergence with the European Union.*

KEYWORDS: transformational public governance; economic recovery; institutional transformation; scenario-based forecasting; European integration.

1. Introduction

Ukraine's recovery is simultaneously a reconstruction challenge, an institutional challenge and a long-term development challenge. The latest joint Rapid Damage and Needs Assessment (RDNA5), released by

the Government of Ukraine, the World Bank Group, the European Commission and the United Nations, estimates that direct damage had exceeded US\$195 billion by 31 December 2025 and that recovery and reconstruction needs over the following decade had risen to almost US\$588 billion (Government of Ukraine et al., 2026). At the same time, the economy has demonstrated a degree of resilience that conventional post-conflict analogies do not fully capture. Real GDP expanded by 2.9% in 2024 after the initial collapse caused by the full-scale invasion, even as labour shortages, infrastructure damage and security risks continued to constrain production and investment (State Statistics Service of Ukraine, 2025). The scale and duration of the shock imply that rebuilding physical assets cannot be separated from reform of the institutions that allocate resources, co-ordinate actors, regulate markets and maintain public trust.

This article uses the term transformational public governance to describe a public-sector capacity for purposeful institutional reconfiguration under conditions in which restoring the pre-crisis equilibrium would be insufficient. The concept goes beyond administrative modernisation in a narrow sense. It encompasses changes in the distribution of authority across levels of government, the digital architecture of public services and decision-making, the relationship between public and private investment, and the mechanisms through which participation, accountability and the rule of law are embedded in recovery governance. This interpretation is consistent with broader transformative-governance scholarship, which emphasises systemic change in institutions, power relations, organisational routines and policy capacity rather than simple adaptation within an unchanged institutional regime (Chaffin et al., 2016; Bosomworth, 2018).

The central research problem is therefore not whether governance matters for economic recovery in an abstract sense, but how a governance framework can be specified without attributing causal effects that the available data cannot credibly identify. This distinction is particularly important for Ukraine. The original quantitative specifications explored governance, institutional and human-capital variables alongside macroeconomic indicators, but the governance-related variables proved highly collinear and unstable. The final OLS and Random Forest models consequently exclude those governance variables. The article therefore does not treat the forecasts as evidence that transformational governance causes a particular rate of GDP growth. Instead, the quantitative component is retained as an exploratory scenario exercise that illustrates the sensitivity and limits of forecasting in a war-affected economy.

Against this background, the article addresses three questions. First, which institutional dimensions should constitute a coherent framework of transformational public governance for Ukraine's recovery? Second, what lessons can be drawn from international experiences of post-war reconstruction, late industrialisation, digital-state development and European integration without assuming that those experiences are directly transferable? Third, what can an exploratory forecasting exercise reveal about plausible recovery trajectories and, equally importantly, about the limits of model-based inference under conditions of structural rupture?

The objective is to combine these questions in a conceptually integrated framework that is useful for public policy while remaining explicit about the evidentiary status of its quantitative component.

2. Theoretical and Comparative Background

2.1. Transformational public governance and institutional change

Institutional theory provides the first foundation for the proposed framework. North (1990) conceptualised institutions as the formal and informal rules that structure interaction, shape incentives and reduce or increase uncertainty. From this perspective, reconstruction finance is productive only to the extent that institutional arrangements can convert resources into credible commitments, co-ordinated action and enforceable rules. Acemoglu and Robinson (2012, 2019) likewise emphasise that long-run development depends on the distribution of political and economic power and on the extent to which institutions remain inclusive rather than extractive. For Ukraine, these arguments imply that recovery cannot be evaluated solely by the volume of finance mobilised or the number of assets reconstructed. The institutional environment that governs project selection, procurement, fiscal relations, regulatory enforcement and stakeholder participation is itself part of the recovery infrastructure.

Transformative-governance scholarship adds a second element. Chaffin et al. (2016) distinguish transformation from adaptation by focusing on changes to the structures and processes that define a system, while Bosomworth (2018) highlights the role of institutional logics, norms and policy-sector capacities in enabling or constraining transformation. Transposed to public governance, these insights suggest that transformational capacity involves more than adding new programmes to existing administrative routines. It requires the ability to redesign co-ordination mechanisms, redistribute decision authority where necessary, combine stability with experimentation, and create feedback systems that allow policy to adjust without losing accountability. In the Ukrainian case, the war has accelerated this need because institutions are simultaneously expected to preserve essential functions, manage emergency demands, support reconstruction and move toward EU accession standards.

This article therefore treats transformational public governance as an enabling institutional architecture rather than as a single measurable intervention. It is composed of several mutually dependent dimensions whose effects are expected to operate through intermediate mechanisms: lower transaction and administrative costs, stronger co-ordination across levels of government, greater transparency, improved investment selection, better public-service accessibility, stronger rule-of-law expectations and increased capacity to mobilise private capital. These mechanisms are theoretically linked to economic recovery, but the strength and timing of the links are empirical questions that require designs capable of addressing endogeneity, measurement error and the exceptional structural breaks produced by war.

2.2. Comparative lessons and the limits of transferability

International experience is useful primarily as a source of institutional mechanisms rather than as a catalogue of numerical benchmarks. South Korea's late industrialisation illustrates the importance of state capacity, strategic co-ordination, learning and investment discipline in a context where development required structural transformation rather than a simple return to a pre-war production pattern (Amsden, 1989). The lesson for Ukraine is not that a particular sectoral model can be replicated, but that public institutions can influence the direction and quality of capital formation when incentives, performance expectations and long-term priorities are coherently aligned.

West Germany's rapid growth in the 1950s provides a different lesson. Eichengreen and Ritschl (2009) show that the post-war shock, reconstruction dynamics and productivity catch-up interacted in ways that resist monocausal explanations. This is directly relevant to the present study because it cautions against attributing recovery outcomes to a single institutional reform. Governance, external assistance, macroeconomic stabilisation, structural conditions and the size of the initial output gap may operate jointly. For Ukraine, this reinforces the need to distinguish a governance framework from an econometric claim that governance alone explains GDP growth.

Estonia offers a more contemporary example of public-sector transformation through digital governance. OECD reviews describe a long-term process in which whole-of-government co-ordination, digital identity, interoperable services and strategic management became mutually reinforcing components of state capacity (OECD, 2015). The most recent OECD Digital Government Outlook continues to place Estonia above the OECD average on core digital-government dimensions, while also emphasising governance structures for data and artificial intelligence (OECD, 2026a). For Ukraine, the transferable lesson lies in institutional integration: digitalisation produces public value when data standards, organisational responsibility, service design, accountability and citizen needs are addressed together, not when digital tools are treated as isolated technical projects.

Ukraine's own decentralisation experience is equally important. The OECD's multi-level governance review concludes that reforms implemented since 2014 strengthened the role and capacities of municipalities and contributed to local resilience after the full-scale invasion, while also revealing persistent disparities in administrative, human-resource and fiscal capacity across territories (OECD, 2022). The 2026 OECD Public Governance Review further argues that Ukraine's wartime governance has demonstrated considerable institutional resilience but that long-term recovery requires stronger strategic planning, citizen participation, information integrity, future-ready public service capacity and trustworthy use of artificial intelligence (OECD, 2026b). These findings support a recovery model that combines decentralised capacity with national co-ordination rather than treating centralisation and decentralisation as mutually exclusive alternatives.

Comparative analysis therefore informs the framework through functional analogies: co-ordinated industrial transformation, multi-level recovery governance, digital public-sector integration and inclusive institutional capacity. It does not establish that Ukraine will reproduce the growth paths of South Korea, Germany or Estonia. Historical context, security conditions, demographic losses, EU accession requirements and the scale of external financing make Ukraine a distinct case. This limitation is incorporated into the research design rather than treated as a residual problem.

3. Research Design and Data

The study adopts a mixed conceptual and exploratory analytical design. Its principal methodological components are institutional analysis, structured comparative analysis and scenario-based macroeconomic forecasting. Institutional analysis is used to identify the governance mechanisms through which multi-level co-ordination, digital transformation, public-private co-operation and inclusive institutions may affect the effectiveness of reconstruction. Comparative analysis is used to identify transferable institutional principles while explicitly accounting for differences in historical trajectory, state capacity and geopolitical environment. The quantitative component is complementary: it illustrates macroeconomic recovery scenarios and model limitations rather than providing a causal test of governance reforms.

The exploratory forecasting exercise uses the panel dataset assembled for the original study, covering Ukraine and ten selected European comparator countries over 2015–2024. After removal of missing observations, the estimation sample contains 108 country-year observations. The dependent variable is annual real GDP growth. The initial model architecture considered investment, inflation, a lagged investment term, a Transformational Governance Index (TGI), a human-capital measure and an institutional-stability measure. In practice, the governance-related variables were strongly correlated with one another and with broader institutional measures; the TGI displayed a variance inflation factor of 34 in the initial specification. This made the coefficients unstable and unsuitable for substantive interpretation.

For that reason, the final OLS and Random Forest specifications use only investment, inflation and lagged investment. Heteroskedasticity detected in the OLS specification is addressed with robust standard errors. The Random Forest model follows the standard ensemble-learning logic introduced by Breiman (2001) and is used here for predictive comparison rather than causal interpretation. The final models therefore do not contain a governance variable. This is a decisive methodological point: any forecast generated by these models is a forecast conditional on macroeconomic predictors, not an estimate of the effect of transformational governance on GDP growth.

The article accordingly distinguishes between two analytical layers. The first is a conceptual governance framework, grounded in institutional theory, comparative evidence and contemporary Ukrainian policy

reforms. The second is an exploratory forecasting layer that tests how conventional predictive tools behave when applied to an economy exposed to extraordinary structural shocks. The layers are linked in policy discussion but not conflated empirically. The governance framework specifies mechanisms and monitoring indicators; the forecast exercise specifies macroeconomic scenarios. Establishing a causal governance-growth relationship is reserved for future research using longer time series, more robust institutional measures and identification strategies capable of addressing endogeneity.

The empirical and policy context is updated with official sources available during revision. The RDNA5 provides the current benchmark for the scale of damage and reconstruction needs (Government of Ukraine et al., 2026). The European Commission's Ukraine Facility and Ukraine Plan provide the principal EU reform-and-investment framework, while the Ukraine Investment Framework is designed to mobilise public and private investment through guarantees, grants and blended instruments (European Commission, 2024; European Commission, 2026). OECD reviews provide evidence on multi-level governance, anti-corruption, public-sector resilience and institutional reform (OECD, 2022; OECD, 2024; OECD, 2026b).

4. A Framework of Transformational Public Governance for Recovery

The proposed framework consists of four mutually reinforcing governance dimensions. They should not be treated as competing models from which policymakers select one. Their value lies in combination: multi-level governance provides territorial adaptability; digital transformation provides integrative infrastructure and information capacity; public-private co-operation extends financial and implementation capacity; and inclusive, accountable institutions provide legitimacy and safeguards against capture. The framework therefore describes a governance architecture rather than four isolated reform packages.

4.1. Multi-level decentralisation and institutional modernisation

The first dimension concerns the allocation and co-ordination of authority across national, regional and local levels. Ukraine entered the full-scale war with a substantially reformed territorial governance system. OECD analysis indicates that decentralisation strengthened municipal responsibilities and created important foundations for resilience, while also exposing uneven fiscal, administrative and strategic-planning capacities (OECD, 2022). Recovery governance should build on this institutional capital rather than replace it with a uniformly centralised reconstruction apparatus.

A transformational model therefore requires differentiated subsidiarity. Local governments should retain responsibility for place-based recovery priorities, local public services and community engagement where capacity exists, while central institutions should ensure national standards, macro-fiscal coherence, strategic infrastructure co-ordination, anti-corruption safeguards and alignment with EU obligations. Regional

and inter-municipal co-ordination mechanisms are needed for projects whose functional geography crosses local boundaries. The objective is not maximal decentralisation, but an adaptive distribution of authority linked to capability, risk and project scale.

Institutional modernisation also requires a coherent project pipeline, transparent investment appraisal and a common monitoring architecture. The 2026 OECD Public Governance Review stresses the importance of stronger strategic planning and co-ordination for recovery and long-term goals (OECD, 2026b). This supports the creation of interoperable recovery-management procedures rather than additional stand-alone agencies whose mandates overlap with existing institutions. Where new co-ordination bodies are established, their functions, reporting lines and sunset or review clauses should be explicit.

4.2. Integrated digital transformation

The second dimension is digital transformation as a governance architecture rather than a collection of electronic services. Ukraine already possesses significant digital assets, including the Diia ecosystem and digital public-finance and procurement systems. The 2026 OECD review notes the scale of citizen uptake and the contribution of digital services to administrative resilience during wartime (OECD, 2026b). The next phase should focus on interoperability, data governance, cybersecurity, auditability and user-centred service design across the full reconstruction cycle.

A transformational digital model would connect project identification, public investment management, procurement, contract implementation, geospatial monitoring and ex-post evaluation through interoperable systems. Open data can support public oversight, while risk analytics can help target audit resources. Artificial intelligence may contribute to document processing, risk detection and service personalisation, but it should be embedded in transparent accountability structures, human review and data-protection safeguards. Estonia's experience is relevant precisely because digital state capacity developed through institutional integration and governance of data rather than through technology adoption alone (OECD, 2015; OECD, 2026a). Digitalisation should therefore be assessed through public value rather than service counts. Relevant indicators include the share of recovery projects with machine-readable data, interoperability across central and local systems, processing time for core recovery services, the proportion of procurement and implementation data available for audit, user satisfaction, cybersecurity resilience and the accessibility of services for displaced people, veterans, people with disabilities and residents of war-affected territories.

4.3. Public-private co-operation and investment mobilisation

The third dimension addresses the mobilisation of private capital and implementation capacity. The

scale of Ukraine's reconstruction needs makes exclusive reliance on public finance unrealistic. RDNA5 explicitly underlines the role of the private sector and identifies business-environment reform, competition, access to finance, labour constraints and alignment with EU green and digital standards as conditions for unlocking investment (Government of Ukraine et al., 2026). The European Union's Ukraine Facility provides an institutional counterpart: its Ukraine Investment Framework uses guarantees and blended finance to reduce risk and crowd in investment, with an expected mobilisation effect substantially larger than the budgetary resources committed directly to the guarantee and grant envelope (European Commission, 2026).

For public-private partnerships, the governance challenge is more important than the formal choice of contract type. Projects require credible risk allocation, transparent procurement, realistic demand and revenue assumptions, clear contingent-liability reporting, independent appraisal and dispute-resolution mechanisms. In high-risk settings, war-risk insurance and public or multilateral guarantees may be necessary, but they should not substitute for project quality or sound fiscal assessment. Transformational governance therefore treats PPPs as one instrument within a wider public-investment framework rather than as an automatic solution to financing gaps.

The same principle applies to blended finance, infrastructure funds and investment guarantees. Their policy value depends on whether they mobilise additional investment, reduce rather than conceal risk, and support projects consistent with national recovery priorities and EU accession commitments. Monitoring should therefore include private capital mobilised per unit of public support, project additionality, procurement competition, lifecycle fiscal exposure, implementation delays and service-delivery outcomes.

4.4. Inclusive, accountable and rule-based institutions

The fourth dimension concerns the institutional conditions under which recovery decisions are perceived as legitimate and are protected from capture. Large-scale reconstruction creates exceptional opportunities for investment but also exceptional corruption and integrity risks. OECD monitoring acknowledges the strength of Ukraine's anti-corruption policy architecture while identifying continuing challenges in implementation, co-ordination and enforcement capacity (OECD, 2024). Transformational governance therefore requires that integrity mechanisms be designed into recovery systems rather than added after funds have been allocated.

Inclusive governance has a related economic function. Participation by local communities, business associations, civil society, social partners and affected groups can improve information quality, identify distributional consequences and strengthen the credibility of difficult prioritisation decisions. Inclusion should not be reduced to consultation without decision relevance. Effective participation requires clear rules on when stakeholders are involved, what information they receive, how comments are addressed and how conflicts of

interest are managed.

The rule-of-law dimension is equally central. Predictable regulation, enforceable contracts, independent oversight and credible protection of property rights influence investment decisions and the willingness of international partners to rely on national systems. In this respect, European integration is not a separate fifth governance model but a cross-cutting institutional anchor. The Ukraine Plan links financial support to reform and investment commitments and embeds recovery in an accession-oriented framework of democratic governance, regulatory alignment and administrative capacity (European Commission, 2024).

4.5. Monitoring architecture: governance capacity versus recovery outcomes

A major revision of the original evaluation methodology is the separation of governance-capacity indicators from economic recovery outcomes. The earlier composite index incorporated macroeconomic variables such as GDP dynamics and investment together with institutional indicators. Such a construction risks circularity if the index is later used to explain GDP performance. The revised framework therefore proposes a Transformational Governance Capacity Index (TGCI) that contains only governance and institutional dimensions. Economic, fiscal and social variables are monitored separately in an Economic Recovery Outcomes Dashboard.

Table 1. Proposed monitoring architecture for transformational public governance

Dimension	Illustrative governance indicators	Expected mechanism	Separate recovery outcomes
Multi-level governance	clarity of competences; municipal strategic capacity; intergovernmental co-ordination; transparent project appraisal	better matching of responsibilities to capacity and place-based needs	GDP and productivity; regional convergence; service restoration
Digital government	interoperability; open project data; processing time; auditability; cybersecurity; user accessibility	lower administrative costs, faster decisions and stronger monitoring	investment implementation; business costs; service access
Public-private cooperation	competitive procurement; risk allocation; private capital additionality; contingent-liability disclosure	mobilisation of finance and implementation capacity under controlled fiscal risk	private investment; infrastructure delivery; employment

Dimension	Illustrative governance indicators	Expected mechanism	Separate outcomes	recovery
Inclusive and accountable institutions	integrity safeguards; stakeholder participation; regulatory quality; contract enforcement; public reporting	higher trust, lower culture risk and stronger investment credibility	investment retention; inequality; trust; social cohesion	

Source: authors' framework based on institutional theory and the governance dimensions discussed in Sections 4.1–4.4.

The TGCI is intended as a future monitoring instrument, not as an empirically validated index in the present study. Its dimensions can be operationalised through publicly observable indicators and, where appropriate, survey-based measures. Weighting should be established transparently through empirical techniques or a documented expert-elicitation procedure rather than borrowed from unrelated publications. The Recovery Outcomes Dashboard, by contrast, can track GDP growth, investment, employment, labour productivity, exports, fiscal sustainability, regional disparities and social indicators without incorporating those outcomes into the governance index itself.

5. Exploratory Scenario-Based Forecasting

5.1. Model specification and interpretation

The forecasting exercise is retained to provide a quantitative complement to the conceptual framework, but its role is explicitly limited. The initial OLS specification included governance and institutional variables together with macroeconomic predictors. Severe multicollinearity, especially for the Transformational Governance Index, produced unstable coefficients. The refined OLS specification therefore takes the form $\text{GDP growth} = f(\text{investment, inflation, lagged investment})$, with robust standard errors. The Random Forest model uses the same predictors and standard ensemble parameters to explore non-linear predictive relationships.

Because the final specifications exclude governance variables, they cannot identify whether digitalisation, decentralisation, integrity reforms or PPP capacity cause higher GDP growth. Nor can the statistical performance of the models validate the conceptual governance framework. Their value lies elsewhere: they show how sensitive recovery projections are to macroeconomic assumptions and how poorly conventional models may perform when confronted with a structural break of the magnitude experienced by Ukraine.

5.2. Backtesting and scenario results

Backtesting provides the clearest empirical result. For Ukraine, actual GDP growth was 5.3% in 2023

and 2.9% in 2024. The original Random Forest model predicted -1.61% and -1.32%, respectively, while the refined OLS model predicted 1.15% and 0.84%. Both models therefore substantially underestimated Ukraine's wartime recovery. The error is not evidence that governance explains the difference; it demonstrates that the models omit major determinants associated with wartime adaptation, external financing, defence-related demand, labour-market adjustment, energy disruptions and policy responses.

The scenario outputs generated from the 2015–2024 estimation window should consequently be read as model diagnostics rather than current forecasts. In the original exercise, the Random Forest baseline scenario generated growth of 1.77% for the first forecast year and 2.63% in the subsequent years; an optimistic investment scenario generated 6.17% and 5.20%, while a pessimistic scenario generated -3.18% and -2.54%. The OLS model produced substantially higher central estimates. The width of this range, together with the poor backtest, is itself informative: point forecasts are fragile under extreme uncertainty, whereas scenario ranges can support stress-testing of policy choices.

Table 2. Diagnostic results from the original forecasting exercise

Exercise	Actual / assumption	OLS output	Random Forest output
Backtest 2023	Actual GDP growth 5.3%	1.15%	-1.61%
Backtest 2024	Actual GDP growth 2.9%	0.84%	-1.32%
Baseline scenario, first forecast year	Investment 20.0; inflation 7.0	7.07%	1.77%
Baseline scenario, subsequent years	same scenario family	6.89%	2.63%
Optimistic RF scenario	Investment 27.5; inflation 5.0	—	6.17% / 5.20%
Pessimistic RF scenario	Investment 11.0; inflation 4.4	—	-3.18% / -2.54%

Note: These are outputs from the manuscript's original 2015–2024 estimation window. They are retained as model-diagnostic scenario results and should not be treated as contemporaneous forecasts or as estimates of governance effects.

The main empirical contribution of the quantitative section is thus negative but useful: the available models do not support a causal claim linking transformational governance to a specific GDP-growth rate. This finding improves the conceptual argument because it clarifies what must be tested in future work. A credible causal design would require a governance measure that is independent of the outcome variable, sufficient cross-country and temporal variation, explicit treatment of endogeneity, and a strategy for wartime structural

breaks. Possible approaches include dynamic panel methods, quasi-experimental designs around institutional reforms, synthetic-control comparisons for specific governance interventions, and subnational analysis where reforms vary across territories.

6. Strategic Imperatives and an Adaptive Implementation Roadmap

The conceptual framework and the scenario evidence point to a set of strategic imperatives. First, recovery governance should be adaptive rather than organised around a fixed institutional blueprint. Roles and co-ordination arrangements must be reviewed as the balance shifts from emergency response to reconstruction and then to structural transformation. Second, digital systems should function as common infrastructure for planning, procurement, implementation and public oversight. Third, private investment should be mobilised through credible risk-sharing and project governance rather than through optimistic assumptions about automatic capital inflows. Fourth, inclusion and integrity should be treated as productivity and legitimacy conditions, not merely compliance requirements. Fifth, all four dimensions should be anchored in the EU accession process so that reconstruction and regulatory convergence reinforce one another.

To avoid the rapid obsolescence of calendar-based roadmaps, implementation can be organised by relative phases. Phase I covers approximately the first 0–18 months of a recovery programme and focuses on institutional readiness: clarifying responsibilities, building a unified project pipeline, strengthening local capacity, embedding integrity controls and ensuring interoperability of digital systems. Phase II covers roughly months 18–36 and emphasises scaling: expanding project implementation, crowding in private capital, broadening digital integration, supporting SMEs and strengthening regional development instruments. Phase III begins once the recovery system has moved beyond emergency reconstruction and concentrates on structural transformation, EU alignment, productivity, human capital and long-term fiscal sustainability.

Table 3. Adaptive implementation roadmap

Phase	Core priorities	Lead tasks	governance	Illustrative monitoring focus
Phase I: institutional readiness (0–18 months)	project pipeline; integrity; local capacity; digital interoperability	clarify competences; standardise appraisal; establish public reporting; strengthen municipal support		project readiness; procurement transparency; service continuity; data completeness
Phase II: scaled implementation (18–36 months)	investment mobilisation; regional recovery; SME support; digital scaling	deploy guarantees and blended finance; strengthen regional co-ordination; expand digital project management		private capital additionality; implementation delays; regional absorption capacity; user access

Phase	Core priorities	Lead tasks	governance	Illustrative focus	monitoring
Phase III: structural transformation (36+ months)	EU convergence; productivity; green and circular transition; human capital	embed EU standards; shift from repair to modernisation; institutionalise evaluation and learning		productivity; high-value investment; regulatory convergence; fiscal sustainability; inclusion	

Source: authors' elaboration. The phases are relative and should be adapted to security conditions, territorial variation and the sequencing of EU-related reforms.

The roadmap also requires a governance mechanism for learning. Recovery projects should be reviewed not only for financial compliance but for whether their institutional assumptions were correct: whether local capacity was sufficient, whether stakeholder participation changed project design, whether digital systems reduced transaction costs, whether risk-sharing mobilised additional private investment, and whether safeguards prevented capture. This converts monitoring from a reporting obligation into a mechanism of institutional adaptation.

European integration provides a practical anchor for this learning process. The Ukraine Plan and the Ukraine Facility connect financial support with reform and investment steps, while the Ukraine Investment Framework is designed to use guarantees and blended instruments to mobilise additional public and private investment (European Commission, 2024; European Commission, 2026). This architecture is particularly compatible with the proposed framework because it links governance reform, investment mobilisation and regulatory convergence rather than treating them as separate policy tracks.

7. Discussion

The revised argument differs from a conventional ‘governance causes growth’ narrative in three respects. First, governance is conceptualised as an institutional capacity that shapes the efficiency, legitimacy and resilience of recovery processes. Its economic effects are mediated through investment quality, co-ordination, transaction costs, accountability and public-service performance. Second, international examples are used to identify mechanisms, not to generate mechanically transferable numerical targets. Third, the quantitative section is explicitly exploratory and diagnostic. Its most important result is that standard predictive models perform poorly for Ukraine precisely when the economy is exposed to exceptional shocks. This repositioning strengthens rather than weakens the policy relevance of the article. Policymakers rarely operate with credible causal estimates for every governance reform, especially during war and early recovery. They nevertheless need a structured way to decide which institutional capacities must be built, which indicators should be monitored and which assumptions should be stress-tested. A conceptual framework coupled with scenario analysis is appropriate for that task if the limits of inference are transparent.

The framework also helps avoid a common measurement problem. If GDP growth, investment or employment are included inside a governance index and that index is then used to explain economic recovery, the explanatory variable partly contains the outcome it is supposed to predict. Separating the TGCI from the Recovery Outcomes Dashboard prevents this construct contamination and creates a clearer foundation for future empirical research. Governance variables can then be measured independently and their relationship with economic outcomes tested with suitable lags and identification strategies.

Several limitations remain. The comparative cases are illustrative rather than exhaustive. The forecast dataset is relatively small and contains economies with different structural characteristics; it does not include direct measures of war intensity, external financing, defence-related demand or regional destruction. The governance framework is theoretically specified but not yet validated as a composite index. The article also does not estimate the distributional effects of different recovery strategies across regions and social groups. These limitations define a research agenda rather than invalidating the framework.

Future research should therefore proceed in three directions. The first is measurement: develop a transparent, replicable governance-capacity dataset using indicators that are conceptually independent of recovery outcomes. The second is causal identification: exploit reforms, policy discontinuities or subnational variation to estimate the effects of specific governance changes. The third is comparative sequencing: examine how the appropriate balance between central co-ordination, local autonomy, private investment and stakeholder participation changes across emergency, reconstruction and long-term transformation phases. Such work would allow the conceptual framework proposed here to evolve into a stronger empirical theory of recovery governance.

8. Conclusions

Ukraine's recovery requires a governance architecture capable of doing more than restoring pre-war institutions and infrastructure. The article identifies four mutually reinforcing dimensions of transformational public governance: multi-level decentralisation and institutional modernisation, integrated digital transformation, public-private co-operation and investment mobilisation, and inclusive, accountable and rule-based institutions. Together, these dimensions provide a framework for connecting reconstruction with institutional resilience, productivity, public trust and EU convergence.

The quantitative analysis does not establish a causal econometric effect of transformational governance on GDP growth. The final OLS and Random Forest specifications exclude governance variables because the initial institutional measures were highly collinear and unstable. Backtesting shows substantial forecast error

for Ukraine in 2023–2024, confirming that structural breaks and wartime conditions sharply limit the predictive value of conventional models. The scenario outputs should therefore be interpreted as stress-testing ranges rather than as forecasts of the economic effects of governance reform.

The principal contribution of the study is consequently conceptual and policy-oriented. It separates governance-capacity indicators from economic recovery outcomes, specifies the mechanisms through which governance can enable effective reconstruction, and proposes an adaptive implementation roadmap rather than a fixed calendar of targets. This formulation is better aligned with the uncertainty facing Ukraine: governance matters not because the present models prove a predetermined growth effect, but because institutional quality shapes whether resources can be converted into legitimate, co-ordinated and sustainable recovery.

For policymakers, the implication is that recovery finance, public administration reform and European integration should be designed as a single institutional project. For researchers, the implication is equally clear: future claims about the economic effects of transformational governance should be tested with independent governance measures, longer and richer datasets, and identification strategies that explicitly address endogeneity and wartime structural change.

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TACKLING AI-GENERATED DISINFORMATION AND REGULATORY RESPONSES: EU–USA COMPARATIVE INSIGHTS

ABSTRACT: *The rapid advancement of generative artificial intelligence (AI) technologies has intensified concerns regarding the proliferation of disinformation, with significant implications for democratic processes, public trust, and international security. This article examines regulatory approaches to AI-generated disinformation in the European Union (EU) and the United States of America (USA), highlighting both convergences and divergences in policy frameworks, institutional responses, and normative orientations. Our research is contingent upon temporal proximity, with the data employed being dated November 2025. While the EU has pursued a proactive, rules-based strategy, most notably through the Digital Services Act and the AI Act, the United States has relied on a more decentralized, sectoral, and market-driven model, emphasizing innovation and self-regulation. By conducting a comparative analysis, the article identifies key strengths and limitations of each approach, particularly in balancing freedom of expression with the need to mitigate harmful content. Furthermore, it explores the extent to which transatlantic cooperation can foster more coherent responses to the global challenges posed by AI-driven disinformation. The findings suggest that although contextual differences shape regulatory choices, mutual learning and coordinated governance mechanisms are essential to effectively address this evolving phenomenon. Ultimately, the study underscores the importance of harmonizing ethical, legal, and technological strategies to safeguard democratic resilience in the digital age.*

KEYWORDS: European Union; AI-generated disinformation; regulatory frameworks; the United States of America; First Amendment

1. Introduction

The accelerated development of generative artificial intelligence (AI) technologies has expanded the frontiers of information production, while simultaneously intensifying concerns about the creation and dissemination of disinformation. The capacity of AI systems to generate highly realistic text, images, audio, and video presents both opportunities and threats for democratic societies. On the one hand, AI can facilitate innovation and enhance digital communication; on the other, it can amplify the spread of false or misleading content at unprecedented speed and scale. Against this backdrop, regulatory responses are emerging as a critical field of inquiry, particularly within the European Union (EU) and the United States of America (USA), two of the most influential global actors in shaping digital governance. The central research question of this study is how do the European Union and the United States regulate the risks associated with AI-generated disinformation, and how do their respective regulatory approaches differ with regard to regulatory architecture, allocation of responsibility, transparency, fundamental-rights safeguards, and enforcement? The study further

addresses three subsidiary research questions - to what extent do the EU and US frameworks address AI-generated disinformation directly, and to what extent do they regulate the broader digital-platform and AI ecosystem through measures that indirectly affect disinformation? How do differences in constitutional and institutional structures, particularly the EU's fundamental-rights and risk-based regulatory framework and the US constitutional protection of speech, shape the design and permissible scope of regulatory intervention? What mechanisms of EU–US cooperation exists for addressing AI-enabled foreign information manipulation and interference, and to what extent do these mechanisms provide a basis for regulatory interoperability?

Rather than testing causal hypotheses, the study develops three analytical propositions that guide the comparative inquiry: the EU and US regulatory approaches differ primarily in the distribution of regulatory authority and responsibility, with the EU relying more extensively on horizontal regulatory instruments and formal platform obligations, while the US framework is characterized by a combination of federal measures, agency action, judicial constraints, voluntary standards, and state-level legislation. The principal divergence between the two jurisdictions is not whether AI-generated disinformation constitutes a regulatory concern, but how that concern is reconciled with fundamental-rights protections, particularly freedom of expression in the United States and the broader fundamental-rights framework applicable within the European Union. Despite differences in regulatory architecture, the EU and US frameworks contain areas of functional convergence, particularly concerning transparency, platform accountability, AI safety, electoral integrity, and foreign information manipulation, creating potential grounds for transatlantic regulatory cooperation. These propositions are treated as analytical expectations rather than hypotheses subject to statistical testing. The purpose of the comparative analysis is to determine whether the documentary and legal evidence supports, qualifies, or contradicts these propositions.

While both actors recognize the risks associated with AI-enabled manipulation of information, their responses differ considerably. The EU has advanced a comprehensive and proactive model of regulation, exemplified by the Artificial Intelligence Act, which aims to classify AI systems according to risk levels and impose obligations on developers and deployers. Complementary initiatives, such as the Digital Services Act, reinforce accountability by requiring platforms to mitigate systemic risks, including the spread of disinformation. Conversely, the USA has pursued a more fragmented approach, prioritizing innovation and freedom of expression. The recent Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (Federal Register, 2023) could have represented a step toward a more coordinated national strategy; it was issued on October 2023. According to our research topic, this document stated that irresponsible AI could exacerbate societal harms, including disinformation, but mostly focused on cybersecurity issues, which are undoubtable related to the informational environment. In this context, The Executive Order was considered to be a Congress's inaction consequence, due to the after 2020 election polarization and

also 2022 byelections (Pelc, P. 2024). This Executive Order was rescinded on January 2025 (White House, 2025). Even so, from our perspective, it would have remained less prescriptive than the EU framework. The methodology employed in this article is a comparative legal and policy analysis, combining document review of official regulations, executive measures, and judicial cases with scholarly commentary on AI governance.

Special attention is paid to the intersection between AI regulation and constitutional protections, particularly in the USA, where the First Amendment imposes strong safeguards for freedom of speech. Several court cases have begun to address issues at the nexus of AI technologies and free expression, illustrating both the opportunities and constraints for regulatory intervention in the American context. Arguments in favour of regulation emphasize the need to protect democratic institutions, safeguard electoral processes, and prevent societal harm caused by synthetic media. Critics, however, caution that overly restrictive regulation could stifle innovation, raise enforcement challenges, and risk infringing upon fundamental rights. This comparative inquiry also considers the prospects for transatlantic cooperation in addressing AI-generated disinformation.

2. Research Overview

The phenomenon of AI-generated disinformation has rapidly become a focal point of scholarly inquiry and policy debates. Researchers from multiple disciplines, such as law, political science, communication studies, and computer science have sought to conceptualize, assess, and mitigate the risks posed by generative AI technologies. A growing body of literature identifies AI-enabled disinformation as distinct from earlier forms of misinformation due to its scale, speed, and sophistication, with particular emphasis on the capacity of large language models and generative adversarial networks (GANs) to produce convincing synthetic media (Romanishyn et al., 2025). Scholars in media studies (Wardle, C., & Derakhshan, H., 2017), have highlighted the societal harms of disinformation ecosystems, while legal scholars have focused on the regulatory dilemmas that arise when balancing technological governance with fundamental rights (Balkin, 2018). In contemporary research and applications, artificial intelligence (AI) utilizes electromagnetic principles to process textual data with exceptional precision, often producing outputs that are virtually indistinguishable from those generated by humans. These systems, referred to as large language models (LLMs), have garnered significant attention due to their transformative potential in natural language processing and computational linguistics. The capabilities of LLMs not only demonstrate remarkable technical advancement but also raise important considerations regarding their impact on communication, information dissemination, and human-machine interaction (FLoridi, L 2023).

Practitioners, particularly within governmental and transnational institutions, have adopted complementary approaches. The European Union has taken a normative, rules-based stance, building upon its existing

regulatory architecture for digital platforms. The EU Code of Practice on Disinformation, followed by the Digital Services Act and the proposed Artificial Intelligence Act, reflects a layered strategy combining self-regulation, co-regulation, and legally binding obligations. We will include these aspects later in our study. Researchers analysing these measures (Helberger, N., Pierson, J., & Poell, T. 2018) emphasize their ambition to operationalize accountability and transparency standards across the digital ecosystem. In contrast, the United States has historically relied on a market-driven and innovation-oriented framework. Academic debates centre on the constraints imposed by the First Amendment, which complicates governmental regulation of disinformation, including when generated by AI. Practitioners in both jurisdictions have underscored the necessity of transatlantic cooperation. Policy research underscores that AI-generated disinformation circulates within a transnational information environment, where fragmented or uncoordinated regulatory responses risk undermining overall effectiveness in countering such threats. Scholars emphasize the need for coordinated governance frameworks to address the scale and cross-border nature of AI-driven disinformation campaigns (Gorwa, R., 2019; European Commission, 2023). Apart from the disrupting and divisive impact of disinformation campaigns in the political debate, influence operations impinge on the autonomy of citizens themselves” (Ignatidou, S., 2019).

Recent empirical studies offer promising evidence that targeted interventions can meaningfully curb the circulation of misinformation and disinformation. Pennycook, G., et al. (2021), using large-scale experimental designs, showed that brief accuracy-focused prompts can substantially enhance the reliability of information individuals choose to disseminate online. Their findings suggest that prompting users to reflect on the veracity of a headline prior to sharing significantly reduces the spread of false or misleading content. This indicates that misinformation often proliferates not through deliberate intent, but rather through momentary inattention to accuracy within the rapid, habitual dynamics of digital communication (Pennycook, C et.al., 2021).

Together, these academic and practical perspectives reveal both convergences, in recognizing the systemic risks of AI-generated disinformation, and divergence, rooted in legal traditions, institutional logics, and political cultures. From AI chatbots, to deepfake media, as elements parts of the AI-driven disinformation techniques, lead to the risk that they may substantially reinforce misleading narratives (Romanishyn, A. et. al., 2025). Our study reveals a reality that was identified at the beginning of 1996, by John Perry Barlow in the already well-known Declaration of the Independence of Cyberspace, noticing that the human will build a new society shaped by human thought within the digital world: ”we will create a civilization of the Mind in Cyberspace. May it be more humane and fair than the world your governments have made before” (Barlow, J. P., 1996).

3. Problem Statement

The rise of generative artificial intelligence has amplified long-standing challenges associated with misinformation and disinformation by enabling the creation of realistic fake news, persuasive synthetic texts, and hyper-realistic deepfakes. Unlike earlier waves of disinformation, AI-generated content can be produced at scale, personalized to target specific audiences, and disseminated rapidly across digital platforms, thereby threatening the integrity of democratic processes, public trust, and social cohesion.

Beyond its informational impact, AI-driven disinformation intersects with cybersecurity risks (Ummer, K., A., 2025), as malicious actors increasingly deploy generative models to craft phishing emails, social engineering campaigns, and malware that evade traditional detection systems. These threats highlight the dual-use nature of AI, where tools developed for innovation can be weaponized to undermine digital security infrastructures. Economically, AI-generated disinformation exacerbates concerns regarding job displacement and broader market disruptions, as automation and content manipulation technologies introduce new vulnerabilities for industries reliant on trust, authenticity, and reputation. Simultaneously, bias and discrimination embedded within AI systems risk perpetuating and amplifying existing social inequalities, particularly when deployed in politically sensitive or adversarial contexts. Furthermore, privacy violations present a critical challenge. The generation and dissemination of synthetic data raise profound questions regarding ownership, consent, and compliance with legal frameworks such as the EU's General Data Protection Regulation (GDPR). These multifaceted risks demand robust regulatory responses.

Thus, divergences between the EU's rules-based governance and the USA's market-driven, First Amendment constrained approach complicate the development of coherent global strategies. Addressing AI-generated disinformation therefore requires not only national regulation, but also coordinated transatlantic solutions. Joint EU–USA efforts, including dialogues under the Trade and Technology Council (TTC) - we will refer to this later in our study - signal an emerging platform for harmonizing approaches. Coordinated transatlantic governance can mitigate cross-border disinformation threats while setting global standards. EU and US cooperation in tackling disinformation should rest on a shared normative foundation, informed by mutually principles and a collective commitment to common democratic values (Ignatidou, S., 2019).

4. Methodology

This study employs a comparative qualitative research design, combining comparative legal analysis, qualitative document analysis, and structured policy analysis. The objective is to identify and explain similarities and differences between the European Union and the United States in their regulatory responses to AI-

generated disinformation, with particular attention to institutional architecture, regulatory instruments, platform accountability, transparency requirements, fundamental rights, and mechanisms of transatlantic cooperation. The study is temporally delimited to developments available up to 30 November 2025. This temporal boundary is important because the regulatory environment surrounding artificial intelligence is undergoing rapid change. Accordingly, the analysis distinguishes between instruments that had been adopted, instruments that had entered into application, and policy initiatives or legislative proposals that remained under development as of the research cut-off date. The empirical material consists primarily of primary legal and policy documents. For the European Union, the corpus includes the Digital Services Act (DSA), Regulation (EU) 2024/1689 establishing the Artificial Intelligence Act (AI Act), the EU Code of Practice on Disinformation and its subsequent integration into the DSA framework, European Commission communications and policy documents, relevant enforcement decisions and proceedings, and documents relating to EU–US cooperation. For the United States, the corpus includes federal legislation and executive measures, relevant agency frameworks and guidance, Supreme Court and lower-court decisions concerning digital speech and platform regulation, selected state legislation addressing AI-generated or manipulated political content, and documents concerning transatlantic cooperation.

Secondary sources, including peer-reviewed academic literature, institutional reports, legal commentary, and policy studies, are used to contextualise and interpret the primary materials. Secondary literature is not treated as equivalent to primary law; rather, it is used to identify competing interpretations, conceptual debates, and broader implications of the regulatory approaches examined.

The comparative analysis proceeds through a common analytical framework applied to both jurisdictions. Five dimensions are used as comparative criteria. The first one regulatory architecture presents the degree to which AI-generated disinformation is addressed through comprehensive horizontal regulation, sector-specific legislation, executive measures, voluntary frameworks, or combinations of these instruments; the second one - regulatory target and allocation of responsibility analysis whether obligations are primarily imposed on AI developers, deployers, online platforms, advertisers, political actors, intermediaries, or public authorities; the third one - transparency, traceability and content provenance provide the extent to which the regulatory framework requires disclosure, labelling, watermarking, provenance information, risk reporting, or access to relevant data; the fourth one - fundamental rights and safeguards explains the manner in which the framework addresses freedom of expression, privacy, equality, media freedom, electoral integrity, and procedural safeguards; the fifth one - enforcement and institutional capacity presents the authorities responsible for implementation and enforcement, available sanctions or remedies, supervisory mechanisms, and the degree of coordination among relevant institutions. A sixth dimension, transatlantic cooperation, is examined separately in order to assess the extent to which the two systems provide mechanisms for policy coordination, common

standards, information exchange, and joint responses to foreign information manipulation and interference.

The qualitative analysis follows a structured comparison rather than a simple chronological description. For each jurisdiction, the relevant legal and policy instruments are first examined individually and subsequently compared according to the common criteria. This enables the study to identify both institutional differences and functional similarities that may not be apparent from a description of individual regulatory instruments. The analysis does not attempt to measure the causal effectiveness of the EU or US regulatory systems in reducing the volume of disinformation. Such an assessment would require longitudinal behavioural and platform-level datasets that are beyond the scope of the present study. Instead, the article evaluates the regulatory design, scope, implementation mechanisms, rights safeguards, and institutional arrangements established to address AI-generated disinformation. Consequently, terms such as "effectiveness" are used in a limited regulatory sense, referring to the capacity of a framework to establish identifiable obligations, oversight mechanisms, transparency requirements, and mitigation mechanisms, rather than to a statistically demonstrated reduction in disinformation. This research design allows the study to answer the research questions through systematic comparison while avoiding an unsupported claim of quantitative measurement.

5. Preexisting Regulatory Approaches

This section of our research aims to present, in parallel, the recent instruments established at both the European Union and United States levels, designed to address the phenomena of misinformation, disinformation, and malinformation (MDM) (Masrek, M. N., et al., 2024).

a. European Union

In the case of the European Union, this effort began in 2015 with the project materialized within the East StratCom Task Force, established to respond to disinformation campaigns originating from the Russian Federation (European Council, 2015). In the spring of 2017, with the objective of curbing the spread of fake news, a conceptual framework was developed through the definition of the three terms, followed by a public consultation in the autumn of the same year (European Commission, 2018).

The chronology of events leading to the formulation of an EU strategy has been documented by author in previous research (Munteanu, N., A., 2019), updated according to the evolution of the European Union's strategy (Munteanu, N., A., 2022), with the aim of incorporating the most recent developments. The significant regulatory milestones generated between 2015 and present includes: 2016 "Joint Framework on Countering Hybrid Threats. A European Union Response (European Commission, 2016); 2017 "Joint Communication on

Resilience, Deterrence and Defence: Building strong cyber security in Europe (European Commission, 2017); 2018 “Joint Communication to the European Parliament, the European Council and the Council. Increasing resilience and bolstering capabilities to address hybrid threats (European Commission, 2018); 2018 “Code of Practice against Disinformation (European Commission, 2018); 2018 ”European External Action Service”; 2018 “Action Plan against Disinformation (European Commission, 2018); 2019 - Rapid Alert System (European Council 2020); 2019 “EU Reports on Progress in Fighting Disinformation Ahead of European Council” (European Commission, 2019); 2020 ”Digital Service Act” (European Commission, 2020); 2022 ”Code of Practice on Disinformation” (European Commission, 2022); 2024 ”Artificial Intelligence Act” (European Commission, 2024).

Following three years of intensive legislative negotiation, the Council of the European Union formally approved the European Union Artificial Intelligence (AI) Act on 21 May 2024, entered into force on August 2024. We mention that the rules will become applicable until August 2026. It was subsequently published in the EU Official Journal on 12 July 2024, marking it as the first comprehensive AI regulatory framework to complete the full EU legislative procedure. Originating from a proposal by the European Commission, the AI Act seeks to simultaneously promote the development and adoption of AI technologies while safeguarding fundamental rights and ensuring a human-centric orientation across the EU. The final legislation comprises approximately 50,000 words, organized into 180 recitals, 113 Articles, and 13 annexes, establishing a holistic, risk-based regulatory system that applies to all stakeholders within the AI ecosystem, including developers, exporters, and deployers (Lathan&Watkins, 2024). Given its expansive scope and regulatory ambition, the AI Act, much like the General Data Protection Regulation (GDPR) before it, is anticipated to exert influence well beyond EU borders and to serve as a benchmark for AI governance in the years ahead.

The year of 2025 is characterized by the gradual application of AI Act, mainly concerning the transparency matters and standardization of the detecting artificial content mechanisms. In the spring of 2025, the European Commission proposed an AI Continent Action Plan (European Commission, 2025), based on five strategic actions, to achieve competitiveness and productivity, and to assure the security, sovereignty and democracy. From our point of view this could be considered as one of the most important steps, including in terms of a possible comparison with the USA strategy.

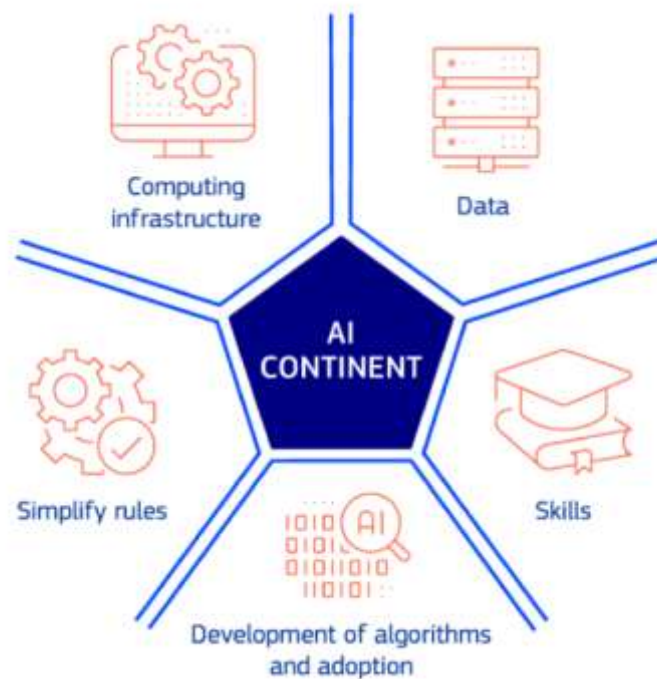


Fig. 1 - AI Continent Action Plan Strategic Areas (European Commission, 2025)

From a competition perspective, but also within the cooperation approach, the fact that the European Union provided a budget of 10 billion euro from 2021 to 2027 to train and finetune AI models, taking shape in at least 13 operational AI factories by 2026 represent not only a target, but mostly a necessity. Part of the computing infrastructure, European Union extend its ambitions to five AI gigafactories (European Commission, 2025) four times powerful than AI factories (20 billion euro allotted), in the context to encouraging the investments to triple the European Union's data centre till 2030-2032. Related to our study it is important to notice also the role of the algorithms and its connections with the informational field, from an informatic perspective. The European Commission released on July 2025 the "General Purpose AI Code of Practice", entered into application on August 2025 (European Commission, 2025), representing a mechanism overseen by 14 independent experts, designed to support industry in meeting the requirements of the AI Act. The rules will start being enforced by the Commission's AI Office one year after adoption, in 2026 for new models and two years after adoption, 2027 for models already on the market. The goal is to ensure that all general-purpose AI models available in the EU, especially the most advanced ones, meet strong safety and transparency standards. This month, November 2025, the European Commission started the project, under the AI Act, aimed to create a code of practice on marking and labelling AI-generated content, based on a public consultation started in September 2025, for a month. This initiative's purposes are to facilitate the manage the AI-generated outputs,

including synthetic, video, visual media, content, in formats that can be readily interpreted by machines, enhancing the detection and traceability. The Code will also provide guidance to entities deploying deepfakes or other AI-generated materials, to ensure transparent disclosure of AI involvement, especially in communications related to the matters of public significance. The requirements are scheduled to take effect in August 2026 and complete the already existing regulatory frameworks (European Commission, 2025). The European Union has established itself as a frontrunner in advancing the implementation of watermarking techniques for generative AI models (Souveraion, T., 2025).

As part of the research methodology we have proposed, we considered it appropriate to present, by way of illustration Cases that involved social media platforms and the implications of digital speech. Within the European Union jurisprudence there are cases and regulatory enforcement actions concerning social-media platforms that implicate questions of digital speech, particularly where content moderation practices rely on algorithmic or automated systems. In the 2024 case of European Commission against Meta as provider for Facebook and Instagram, frameworks (European Commission, 2025), the platform is under the suspicion of breaching the Digital Services Act. In this context we mention that since 2023 Facebook and Instagram are part of the VLOPs (Very Large Online Platforms), under the rule of complying with the obligations set out in the DSA (European Commission, 2023). The main elements of the ongoing proceedings is focused on disinformation and deceptive advertisements, visibility of political content, the mechanism to flag illegal content.

Another case significant for our research is *Meta Platforms Ireland v Commission/TikTok Technology v Commission* (Court of Justice of the European Union, 2025). Under the Digital Services Act (DSA), the European Commission is assigned specific supervisory responsibilities over certain service providers that qualify as very large online platforms or very large online search engines, a status triggered once their user base in the European Union surpasses a defined quantitative threshold. To finance the execution of these regulatory functions, the Commission imposes an annual supervisory levy on each designated provider. The amount payable is calculated in proportion to the platforms or service's average number of monthly users, ensuring that the fee reflects the scale of the service subject to oversight. The general Court annuls the decisions of the Commission related to the supervisory fee applicable on Instagram, TikTok and Facebook. In 2025 a Berlin Court decided in favor of two German NGOs, in a lawsuit against X. The social media was accused that violates the EU's Digital Service Act, concrete the aspect that compels platform to provide, without undue delay, public data to the researches (Desmarais, A., 2025). The DSA obliges platforms designated as "very large" to grant qualified non-profit entities, organisations, and research associations access to their internal data when such access is necessary to conduct studies aimed at detecting, identifying, and analysing systemic risks arising on social media.

The case is also important from a pecuniary point of view, because although X offers only a minimal level of free API (Application Programming Interface) access, anyone requiring substantial data volumes must purchase a paid tier, its “Pro access”, which can reach as high as \$5,000 (€4,794) per month. According to those two NGOs representative, this pricing makes meaningful data access effectively unattainable. It is particularly noteworthy, within the framework of this case, that The European Commission’s preliminary inquiry into X reached a similar conclusion. In its 2024 press statement, the Commission observed that the platform seemingly discourages researchers from pursuing their investigative work or effectively compels them to incur excessively high costs in order to do so (Pinge, A., 2024).

In this regard, it is deemed appropriate to mention few of the European Union actions: in 2024 The European Commission has rendered TikTok’s undertakings to permanently discontinue the TikTok Lite Rewards programme within the European Union legally binding. These commitments, submitted by TikTok in response to the concerns identified by the Commission are intended to ensure the platform’s compliance with the obligations set forth under the DSA. This decision represents the first instance in which the European Commission has concluded proceedings under the article 71 of the DSA, doing so 105 days subsequent to their initiation. It also constitutes the first occasion on which the Commission has accepted commitments from a designated online platform in the context of formal proceedings initiated under the DSA (European Commission, 2024). In 2024 the European Commission has informed X that its activity is against the DSA, in terms of advertising transparency, data access for researchers, dark patterns. The purpose was to ensure that all the platforms, including X comply with EU legislation (Vestager, M., 2024).

b. The United States of America

The USA implemented several legislative measures to combat disinformation and misinformation, such as National Artificial Intelligence Initiative Act of 2020 (U.S. Congress, 2020); Educating against Misinformation and Disinformation Act 2021-2022 (U.S. Congress, 2022); Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (White House, October 2023); Legislation against Deepfakes (Federal Trade Commission, February 2024); State Department’s Framework to Counter Foreign State Information Manipulation, (U.S. Department of State, January 2024). Since the beginning of 2025 the situation related to AI is in a continuous moving (White House, 2025).

Several U.S. states have enacted legislation addressing deepfakes and artificial intelligence. For example, since 2019 Texas and California (Brennan Centre for Justice, 2023) passed laws prohibiting malicious deepfakes in elections, while Virginia, in the same year, criminalized deepfake pornography. More recent bills, such as New York’s digital impersonation laws, expand protections against AI-enabled identity misuse.

Wisconsin requires disclaimers on AI-generated political content. Arizona has introduced measures that allow civil actions against the creators of AI-generated disinformation targeting political candidates or officials (Voting Rights Lab). Florida imposes criminal penalties for failing to include disclaimers on such content (Brennan Centre for Justice, 2024).

i. AI and the First Amendment

The First Amendment of the United States Constitution safeguards essential civil liberties, encompassing freedom of speech, freedom of the press, the right to assemble, the right to petition the government for redress, and the protection of religious practice. These constitutional protections are particularly significant in contemporary debates surrounding the dissemination of disinformation and misinformation, as they frame the legal and ethical boundaries for regulating speech while maintaining democratic principles. Two key ideas help us understand when the First Amendment permits legal regulation of the people and organizations that use Big Data, algorithms, and artificial intelligence. The first is the concept of information fiduciaries. The second is the concept of algorithmic nuisance (Balkin, J. M., 2018). As AI becomes more integrated into society, its relationship with the First Amendment raises numerous legal and ethical questions:

Freedom of speech AI as a content generator. A central question in the study of AI-generated content is whether such speech is afforded protection under the First Amendment. This category encompasses a broad range of expressions created by AI, including scholarly articles, social media posts, and other digital content (Balkin, J. M., 2020; Klonick, K., 2022). The rapid advancement of generative AI models, such as large language models and multimodal systems, raises novel legal and ethical challenges, as courts have not yet definitively established whether AI-generated content enjoys the same constitutional safeguards as human speech (Citron, D. K., & Norton, H. L., 2021). Scholars argue that the distinction between human and machine-generated expression may have profound implications for content regulation, freedom of expression, and accountability in digital spaces (Gasser, U., & Almeida, V. A. F., 2017). Until judicial precedent emerges, policymakers and legal practitioners must navigate the uncertainties surrounding AI-generated content, balancing innovation with constitutional protections.

In terms of *regulation and censorship*, the platforms employing AI for content moderation face the challenge of balancing the removal of harmful or illegal content with the protection of users' freedom of speech. While AI systems can efficiently detect and eliminate content such as misinformation and hate speech, they are not infallible. These systems may misinterpret context, leading to over-censorship or the suppression of legitimate expression (Hakami A., & Tazel, R., 2024). Additionally, biases inherent in AI algorithms can disproportionately affect marginalized communities, undermining democratic values (Balendra, S., 2025). Therefore, it is crucial for platforms to implement transparent, accountable, and equitable moderation practices that uphold both safety and free expression (Kamande, J., 2024).

Freedom of Press. AI in Journalism Artificial intelligence is increasingly integrated into journalism, facilitating tasks such as data analysis, content creation, and distribution. While AI tools can enhance journalistic efficiency and innovation, their use raises complex legal questions, particularly concerning First Amendment protections. Courts have established that computer code constitutes speech under the First Amendment, thereby extending protections to AI-generated content (Foundation for Individual Rights in Education, 2024). However, AI itself lacks constitutional rights; thus, the speech rights pertain to the human creators or users of the AI tools (Balkin, J. M., 2020). This distinction is crucial as it influences the application of speech regulations and the assignment of liability for AI-generated content (Kazaryan, A., 2025). As AI continues to shape journalism, legal frameworks must adapt to balance innovation with the preservation of free speech principles.

Accountability. The integration of artificial intelligence into journalism raises significant concerns regarding accountability for errors and biases in AI-generated content. AI systems, lacking moral agency, can produce content that is inaccurate or biased, yet attributing responsibility is complex. Studies indicate that AI-generated news often exhibits gender and racial biases, with some models demonstrating higher levels of discrimination against women and Black individuals (Fang, X., et al., 2024). The absence of clear accountability frameworks exacerbates these issues, underscoring the need for transparent and responsible AI usage in journalism (Morosoli, S., et al., 2025).

Bias and Discrimination. Algorithmic bias in artificial intelligence systems poses significant challenges to the First Amendment, particularly concerning free speech and equal protection. AI models, trained on vast datasets, can inadvertently perpetuate racial, gender, and ideological biases, leading to discriminatory outcomes in areas like hiring, law enforcement, and media representation. While the First Amendment protects individuals' rights to free speech, it does not extend these protections to AI systems themselves (Salib, P., 2024). This distinction is crucial, as it allows for regulation of AI outputs to prevent harm without infringing on constitutional rights. However, the challenge lies in balancing regulation with the preservation of free expression, ensuring that efforts to mitigate bias do not inadvertently suppress legitimate speech (Kazaryan, A., 2025). As AI continues to influence public discourse, ongoing legal and ethical considerations are essential to uphold both non-discrimination and free-speech principles.

Private Companies. Social media platforms and other private technology companies operate under different legal constraints than government actors, as the First Amendment restricts only governmental suppression of speech (Cornell Law, 2023). These entities possess broad authority to develop and enforce content moderation policies, including the management of disinformation and misinformation, often leveraging artificial intelligence tools to automate detection and removal processes (Gorwa R. et al., 2020). AI-based moderation must navigate the tension between minimizing harm and preserving free expression, highlighting the ethical and technical challenges of algorithmic governance (Napoli, 2019). The cooperation between U.S.

authorities and major tech platforms such as Google, Microsoft, Twitter, Facebook, Tik Tok, Instagram, related to AI exists in several areas including ethical standards, research, security and regulation: Ethical AI Guidelines, under the umbrella of U.S: National Institute of Standards and Technology (NIST).

From the perspective of the legal landscape, the intersection of the First Amendment and AI is an evolving area of law, including court cases and legislation and regulation. Related to court cases, there have been court cases directly addressing AI and the First Amendment, but future litigation is likely as AI continues to advance. *NetChoice v. Paxton* (2024) - this case involves the challenge against Texas' HB 20, a law that restricts social media platforms from moderating content based on viewpoints. AI plays a crucial role in content moderation, and the outcome of this case could impact how companies use AI to manage speech on their platforms (Cornell's Legal Information Institute, 2024). *Gonzalez v. Google LLC* (2023) - this Supreme Court case examines Section 230 of the Communications Decency Act, which provides immunity to online platforms for user-generated content. The role of AI in recommending and moderating content will be a critical aspect of this case (Supreme Court of the United States, 2023). *Knight First Amendment Institute v. Trump* (2019) - while not directly about AI, this case involved the use of social media algorithms. The court ruled that President Trump's blocking of users on Twitter violated the First Amendment. The implications of this ruling extend to how AI and algorithms used by social media platforms can impact free-speech rights (Supreme Court of the United States, 2019). *White Coat Waste Project v. Greater Richmond Transit Company* (2020). This case involved the use of AI to display advertisements on public buses. The Greater Richmond Transit Company (GRTC) rejected an advertisement from the White Coat Waste Project, leading to a lawsuit alleging First Amendment violations. The court ruled that the GRTC's advertising policy was too vague and constituted viewpoint discrimination, thus violating the First Amendment. This case underscores how AI can be used in public communications and the potential for First Amendment challenges (United States Court of Appeals for the Fourth Circuit, 2022). *Fields v. Twitter* (2018) - this case involved claims that Twitter's algorithms (a form of AI) aided terrorists by allowing their messages to be disseminated, raising questions about the liability of AI systems in facilitating harmful speech (United States Court of Appeals for the Ninth Circuit, 2018). *Hunt v. Board of Regents of the University of New Mexico* (2018) - Paul Hunt, a medical student, was suspended for a Facebook post criticizing the use of taxpayer funds for abortions. Hunt sued, claiming the university violated his First Amendment rights (United States District Court for the District of New Mexico, 2018).

Although AI was not the central issue, the case involved social media platforms and the implications of digital speech, which are increasingly moderated by AI algorithms. *Carpenter v. United States* (2018). This case addressed the use of cell-site location information (CSLI) by law enforcement without a warrant. While not directly about AI, it raised significant questions about privacy and the use of technology in surveillance. The Supreme Court ruled that accessing historical CSLI constitutes a search under the Fourth Amendment,

thus requiring a warrant. The decision has implications for AI technologies used in surveillance and data collection. These cases illustrate the complex and evolving legal landscape at the intersection of AI and First Amendment rights. As AI technology continues to develop, we can expect more legal challenges and decisions in this area.

Recent legal developments have begun to address the intersection of artificial intelligence (AI) and the First Amendment, particularly concerning the protection of AI-generated speech. In *Garcia v. Character Technologies*, a federal court declined to dismiss a lawsuit involving an AI chatbot, expressing scepticism about whether the chatbot's outputs qualify as "speech" under the First Amendment (United State District Court for the Middle District of Florida, 2025). Conversely, in *Walters v. OpenAI*, a Georgia state court suggested that AI-generated content might be entitled to First Amendment protections (United States Court of Appeals for the Eleventh Circuit, 2024; National Constitution Center, 2025). These conflicting rulings highlight the evolving nature of jurisprudence in this area. Legal scholars debate whether AI outputs should be considered speech, with some arguing that extending First Amendment rights to AI could hinder effective regulation (Atkinson et al. 2025). As AI continues to influence public discourse, courts will likely play a pivotal role in defining the scope of constitutional protections for AI-generated content. Related to legislation and regulation, Law-makers and regulators are beginning to address AI-related issues, but there is no comprehensive legal framework yet. This includes efforts to address algorithmic transparency and accountability.

6. Arguments in Favor of and Against Regulation

Considering the importance of objectivity in the research approach, we have analysed both the advantages and disadvantages associated with regulating AI-generated disinformation. Our analysis indicates that proponents of implementing a regulatory framework primarily emphasize four key elements: combating disinformation, safeguarding democracy, strengthening national security, and protecting public health from an informational perspective.

Regulating AI-generated misinformation can enhance societal resilience by mitigating the rapid spread of false content and protecting democratic processes (Helberger, N., Pierson, J., & Poell, T., 2018). It supports national security by reducing vulnerabilities to manipulation campaigns and safeguards public health through the containment of harmful disinformation (Floridi, L., & Chiriatti, M., 2020). Moreover, a clear regulatory framework fosters accountability among technology providers and promotes transparency in algorithmic content generation (European Commission, 2021).

Conversely, arguments against regulation centre on concerns related to freedom of expression, enforcement challenges, the risk of stifling innovation, and global regulatory discrepancies. We argue that these two

perspectives, advanced by both scholars and practitioners, should be addressed through four management criteria: transparency requirements, collaboration with technology companies, educational campaigns, and accountability measures. Regulating AI-generated misinformation may risk limiting freedom of expression, particularly in jurisdictions with strong speech protections like the United States (Balkin, J. M., 2020). Enforcement challenges arise due to the global, rapidly evolving nature of AI technologies, potentially leading to inconsistent application (Gasser, U., & Almeida, V. A. F., 2017). Overly restrictive regulations may also stifle innovation and hinder technological development, while international discrepancies complicate cross-border governance (Wagner, B., 2021).

7. The Eu and the USA Cooperation to Combat AI-Generated Disinformation

The EU–US Trade and Technology Council (TTC) has become a central platform for transatlantic cooperation in addressing AI-generated disinformation. Established in 2021, the TTC aims to align digital policies between the EU and the US, focusing on shared democratic values and human rights (European Commission, 2021). A key initiative under the TTC is the Joint Roadmap for Trustworthy AI, which emphasizes the development and deployment of AI technologies that are transparent, accountable, and respect fundamental rights (Centre for AI and Digital Policy, 2022). This roadmap serves as a foundational framework for both regions to harmonize their approaches to AI governance, ensuring that AI systems do not perpetuate or amplify disinformation.

Furthermore, the TTC has facilitated collaboration on combating foreign information manipulation and interference (FIMI), recognizing the threats posed by AI-driven disinformation campaigns to democratic processes (Office of the United States Trade Representative, 2023). By coordinating efforts, the EU and the US aim to enhance resilience against such threats, leveraging shared resources and expertise. Through these concerted efforts, the EU and the US demonstrate a commitment to not only advancing AI technologies but also ensuring they are developed and utilized in ways that uphold the integrity of democratic institutions and the dissemination of truthful information.

The European Union (EU) and the United States have increasingly recognized the need for transatlantic cooperation to combat AI-generated disinformation, particularly in the context of elections and democratic integrity. In 2023, both parties expressed deep concern over foreign information manipulation and interference (FIMI), emphasizing the importance of joint efforts to address disinformation challenges. This collaboration has been further institutionalized through the signing of the Framework Convention on Artificial Intelligence by the EU, US, and UK in September 2024 (Council of Europe Portal, 2024). This legally binding treaty aims

to align AI development with human rights, democracy, and the rule of law, setting forth principles for transparency and accountability in AI systems. By creating legally enforceable commitments, the treaty aims to guide AI development in accordance with human rights, democratic norms, and the rule of law, emphasizing principles of transparency, accountability, and ethical governance.

Moreover, the EU's Digital Services Act (DSA) and the US's AI initiatives have prompted discussions on creating a unified AI code of conduct. In June 2023, lawmakers from both regions agreed to draft such a code, focusing on mitigating AI-driven disinformation risks (Drake et al., 2023). These efforts are complemented by collaborative research projects under Horizon Europe, such as AI4Media, AI4Trust, TITAN, and vera.ai, which aim to develop tools and strategies to counter sophisticated AI-generated disinformation (EU Disinfo Lab, 2025; Munteanu N. A., 2022)

Despite these advancements, challenges persist. The closure of the US Global Engagement Centre in 2025, due to domestic concerns over censorship, has raised questions about the sustainability of joint disinformation initiatives (Congressional Research Service, 2024). Nevertheless, the EU and US continue to explore avenues for collaboration, recognizing that a coordinated approach is essential to effectively address the evolving threat of AI-generated disinformation.

8. Conclusions

The EU has introduced the Digital Services Act and the Artificial Intelligence Act, which aim to regulate digital platforms and AI technologies to prevent the spread of disinformation. The USA, through agencies like the Federal Trade Commission (FTC) and legislative initiatives, is working on policies to address the ethical use of AI and combat disinformation. EU and U.S. policymakers are aligned around two core themes for AI policy, enabling innovation and competition, ensuring trust and accountability.

During our research we noticed few *differences*; EU tends to focus on risk management and trust. U.S. tends to focus on the innovation and growth, greater research and development funding, and light-touch regulation. The Trade and Technology Council could play a role by exploring to what extent these approaches can be aligned behind a US-EU effort to enable safe and responsible AI innovation and adoption globally. Tackling AI-generated disinformation is a critical issue for both the European Union and the United States, as it poses significant risks to democratic processes, public health, and social cohesion. Here are some *strategies and initiatives* being considered or implemented by both regions to address this challenge: the potential threats posed by AI-generated content to the European Union (EU) and the United States (USA) can be understood from several perspectives; *misinformation and disinformation* related to the fact that AI-generated content can be used to create realistic fake news, deepfakes, and other forms of misinformation, which can influence public

opinion, interfere with elections, and create social unrest. This is a significant concern for both the EU and the USA. *Cybersecurity*: AI-generated phishing emails, malware, and other cyber threats can be more convincing and harder to detect, posing risks to individuals, businesses, and government institutions. *Economic Disruption*: Automation and AI-driven technologies can displace jobs, leading to economic and social challenges. While AI can create new opportunities, it also requires a shift in workforce skills and training. *Privacy*: AI systems that process and analyse large amounts of data can lead to privacy violations. This is a major concern, especially in the EU, which has strict data protection regulations under the General Data Protection Regulation (GDPR). *Bias and Discrimination*: AI systems can perpetuate and amplify existing biases if not properly managed. This can lead to unfair treatment and discrimination in areas such as hiring, lending, and law enforcement.

In response to these threats, both the EU and the USA are actively working on regulatory frameworks to ensure the safe and ethical use of AI. The EU has proposed the AI Act, which aims to regulate high-risk AI applications and promote trustworthy AI. The USA is also considering various legislative measures and has established initiatives to ensure AI development aligns with ethical guidelines and national security interests. Overall, while AI-generated content and applications present potential threats, they also offer significant opportunities for innovation and improvement in various sectors. The key lies in managing and mitigating the risks through robust regulation, ethical guidelines, and continuous oversight.

We consider in our study few *common challenges and solutions*, such as detection and verification, developing sophisticated AI and machine learning algorithms capable of identifying AI-generated disinformation, strengthening the role of independent fact-checkers and providing them with better tools and resources, platform accountability, by ensuring that social media platforms and tech companies take proactive measures to prevent the spread of disinformation; implementing transparent policies for content moderation and providing clear guidelines for users.

Our research had an important content in terms of the legal and ethical considerations. We consider that balancing the need to combat disinformation with the protection of free speech and privacy rights. Establishing clear and fair legal frameworks that address the complexities of AI-generated content. By addressing these issues through a combination of regulation, technology, public awareness, and international cooperation, the EU and USA can better tackle the growing threat of AI-generated disinformation.

Despite their regulatory differences, the EU and the USA share strategic interests in countering threats posed by malign actors and foreign interference campaigns. Joint initiatives, dialogues, and working groups suggest a growing recognition that only coordinated approaches can effectively mitigate the cross-border nature of AI-driven disinformation. By analysing the convergences and divergences between the EU and USA

approaches, this article seeks to contribute to a deeper understanding of how democratic societies can balance innovation, freedom of expression, and security in the age of generative AI.

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THE PRACTICE OF CONSENSUS IN THE EUROPEAN COUNCIL: INCOMPETENT PERFORMANCE, FAILED CONSENSUS-SEEKING, AND THE ROLE OF QUALIFIED MAJORITY VOTING

ABSTRACT: *The European Council tends to decide by consensus, but from time to time important decisions are taken despite opposition from one or more member states. I argue that in some of these cases employing qualified majority voting can preserve rather than undermine the culture of consensus. Specifically, I am interested in instances of incompetent performance of the practice of consensus and reactions to them. I apply practice theory and use analyticist process tracing to conceptualise a mechanism which depicts these dynamics. I develop this mechanism and discuss its limits of portability by analysing three empirical cases: Donald Tusk's re-election in 2017 and European Commission's president nominations in 2014 and 2019. The paper proposes a new perspective on seemingly failed consensus-seeking processes, explaining how they can be reconciled with the culture of consensus. Moreover, the analysis highlights how practices can lead to change while also ensuring continuity, which is an important idea for practice theory.*

KEYWORDS: culture of consensus; decision-making; discourse; practice turn; qualified majority voting; social practice

1. Introduction

On 9 March 2017, the European Council re-elected Donald Tusk for a second term as its president (European Council 2017). It would normally have been a run-of-the-mill decision for the EU and have been of limited interest to researchers, especially given that new people are selected for top positions every five years. However, in this case, something extraordinary happened: for the first time the president of the European Council was elected without the consensual agreement of all Member States. Tusk was re-elected despite a no-vote from none other than Poland, the country Tusk had been prime minister of between 2007 and 2014.

Both the European Council and the Council are often described as operating under “the culture of consensus”, which means that even if they formally can decide on some issues by qualified majority, in practice they rarely do. Consensus is seen as a defining element of the EU’s “political identity” (Novak 2013, 1091) and “a cornerstone of [its] political process” (Novak et al. 2021, 475). This paper explains how and why this culture of consensus might not always bring about consensus in the European Council.

I develop an understanding of the culture of consensus rooted in practice theory. I argue that looking at culture as a dynamic interplay of practice and discourse helps us understand the varied outcomes of decision-making. The crucial point is that the practice of consensus, like all social practices, can be performed at various levels of competence. When a practice is performed competently, its performance strengthens the corresponding discourse and maintains the continuity of the culture of which it is a part. Incompetent performance of a practice, on the other hand, can lead to changes in the associated discourse and culture. Such changes might be unwelcome if most actors participating in the practice value the current state of that culture. This suggests that incompetent performance can provoke efforts to avoid such a result. I argue that using formal provisions that allow for qualified majority voting is the last resort of such opposition. In such circumstances, rather than undermining the culture of consensus, explicit voting serves to preserve it.

The paper makes two main contributions. The first speaks to the debates in EU studies on decision-making in EU intergovernmental bodies, in particular the literature examining the existence, origins and effects of the culture of consensus in both the European Council and the Council (i.a. Heisenberg 2005; Häge 2013; Novak 2013; Kaniok 2016; Puetter 2016; Smeets 2016; Novak et al. 2021; Ławniczak 2023). My focus is on the European Council, the less studied of the two institutions. I offer a new perspective of looking at the seemingly failed processes of reaching consensus, providing an analyticist mechanism which can help shed light on the past and future instances of such processes.

The second contribution is aimed at the broader discussion on practice theory in European and international studies, in particular how it deals with the problem of change and continuity. While it has been argued that practices can promote both continuity and change (Adler and Pouliot 2011, 18), this seemingly contradictory idea has come in for criticism (Ringmar 2014), in particular due to its vagueness. My contribution is to show how ruptures, such as moving away from an established norm, brought about by the modification of a practice's performance, might ensure continuity of the practice itself—including in its criteria of competence—rather than induce further change. This happens under certain circumstances, such as those brought about within the discursive and cultural context of a practice, and the competence of its performance.

In the following section, I review the literature on consensus in the intergovernmental bodies of the EU and then present my practice-oriented approach. Next, I explain my use of analyticist process tracing and apply it to develop a mechanism which describes some of the consensus dynamics in the European Council. I focus on actors and the way they react to incompetent performances of a practice. I then move on to show the instantiation of this mechanism: the re-election of Donald Tusk as the European Council's president in 2017, marking the first and only time the European Council has elected its president by qualified majority rather than unanimously. I compare this case with the nominations of the European Commission's presidents in 2014

and 2019, which show different outcomes when a non-blocking minority opposes a candidate. They also allow me to probe the extent of the proposed mechanism's portability.

2. The practice of consensus in the European Council and the Council

2.1. Varieties of the culture of consensus in the European Council and the Council

The European Council plays a leading role in EU politics. Since the 2010 Eurozone crisis, it has become more involved in policy-making, covering detailed and politically salient issues (Puetter 2014, 69–71). Highly politicised issues might be incompatible with deliberation and consensus at the Council level (Pollack and Shaffer 2010), but when a decision is necessary (in the face of crisis, for example) the European Council, as the last instance, usually delivers a solution.

By default, the European Council decides by consensus, sometimes formalised as unanimity. Only certain decisions, such as major appointments, can be taken by qualified majority (Schoutete 2012). In the Council the situation is the other way round: a small number of decisions formally require unanimity, while most issues can be decided by qualified majority. However, the Council's voting record shows significantly lower levels of dissent than quantitative models predict (König and Junge 2010). The Member States usually refrain from voting against or abstaining, even if a decision does not fully satisfy their positions (Høyland and Hansen 2014). In the recent literature on decision-making in the Council, some authors point towards potential weakening of the culture of consensus, while others claim it is "enduring" (Roos 2019; Pircher and Farjam 2021; Juncos and Pomorska 2024; cf. Novak et al. 2021).

Novak (2013, 1094) argues that consensus should be understood as lack of explicit opposition – decisions may not be supported unanimously, but opponents withhold their reservations. According to Chelotti (2016), practices of cooperation at the European level are limited by national orientations of the actors involved. To oppose ineffectively could bring the attention of domestic public opinion to the failure of the government. Moreover, the tenability of isolated opposition depends on context, including which country is isolated in a particular case. If unanimity is required, governments focus on delaying or blocking unwanted decisions at early stages rather than vetoing them explicitly at the level of ministers (Smeets 2016). Similarly, in the European Council, even if vetoing is possible, it is not an instrument that can be used freely (Tallberg 2008, 695).

In this paper, I assume there are varieties of "the culture of consensus" in both the European Council and the Council. The academic literature on the Council is much more extensive than that on the European Council, which, with a view to characterising these varieties, is why I'm drawing from both. But just how similar are the cultures of consensus between the two institutions?

The European Council comprises individuals, while the Council, even on the ministerial level, is a meeting of delegations (Puetter 2014, 99). This quality, coupled with the lack of transparency regarding the course of its meetings, encourages frank discussion and gives the leaders “the space to think” that is required to solve problems (Hillebrandt and Novak 2016). The difference between the Council’s rotating presidency and the European Council’s president also plays a role in this regard (Przybylska-Maszner 2020). The former is a team effort, and lasts for a mere six months. The Council’s presidency is also more constrained: on the agenda-setting side by the Commission, and on the compromise-brokering side by the need to find common ground with the European Parliament in most matters, in particular legislation. The European Council’s president, on the other hand, is an individual, has a longer mandate and greater control over the agenda. Brokering tasks are more challenging for them, however, as for most decisions consensus is not just an informal norm, but a formal requirement (Tömmel 2017).

A meeting of the European Council is the culmination of previous diplomatic efforts and discussions, just as the results of decision-making in the Council are dependent on the dynamics within its multi-layered structure of preparatory bodies (cf. Lewis 2010; Smeets 2015). Puetter (2016, 602) claims that, in both institutions, consensus-seeking is “a practice which reflects the desire of Member State governments to act collectively even in the absence of centralised EU powers”. Overall, there seems to be a strong preference for compromise and reciprocity, which informs the outcomes of negotiations, even in difficult cases such as the Eurozone crisis (Lundgren et al. 2019).

2.2. Competent and incompetent performance of the practice of consensus

Countless attempts have been made to define the term “practice”. As a noun, it can be countable or uncountable (Kustermans 2016) and it can be substituted by or contrasted with *praxis* (Kratochwil 2018). Emmanuel Adler and Vincent Pouliot (2011, 4) define practices as: “socially meaningful patterns of action, which, in being performed more or less competently, simultaneously embody, act out, and possibly reify background knowledge and discourse in and on the material world”. While some argue that the notion of “competent performance” should be dropped, leaving only the “socially meaningful patterns of action” aspect (Bicchi and Bremberg 2016), Adler and Pouliot’s definition is useful for the purpose of this paper.

Performing a common practice produces and sustains social order – it is “performed into being” through practices (Bueger and Gadinger 2015; Adler-Nissen 2016). Practices, in turn, rest on background knowledge, which encompasses the non-intentional or pre-intentional abilities that allow intentional mental states to emerge. Practices are a means of translating this ideational background into intentional and socially meaningful action. Background knowledge therefore does not simply enable practices but is bound up within

them, which emphasises the interdependence between practitioners. A practice is socially recognisable and can be performed with varying degrees of competence (Adler and Pouliot 2011). This notion is important here, because this paper focuses on what the insufficiently competent performance of a practice could bring about. According to Neumann (2002), culture can be understood as the dynamic interplay of discourse and practice, mediated by stories. Practices are institutionalised and naturalised in a given setting, where they become involved in relations of power and authority. Neumann (2002, 637) observes that “as long as people act in accordance with established practices, they confirm a given discourse”. This corresponds to the perspective of Adler and Pouliot (2011, 18), who claim that “The performance of practices in socially recognizable ways is the source of ontological stability in social life.” To ensure continuity for a given culture, the practices must therefore be performed competently. Competent performances of a practice strengthen the corresponding discourse and preserve the continuity of the culture to which it belongs. It follows that performing a practice with an insufficient level of competence can lead to changes in discourse and, potentially, in culture. I would add here, though, that such change is not inevitable. It occurs unless the incompetent performance is met with effective opposition by other actors, who care about the preservation of the existing state of culture. This opposition, however, might introduce changes on another level. While it serves to maintain the overall culture, as well as the criteria of competence of a given practice, it might mean that certain aspects of the practice’s performance must be changed or, as shown in the analysis below, a long-standing norm, relevant in a particular case, must be abandoned.

To perform the practice of consensus competently, engaged parties need to act in a specific way. Criteria of competence are – in part or even mostly tacitly – negotiated and renegotiated among practitioners. Moreover, their relevance is dependent on the relational context of the performance – where and in whose company the practice is enacted. In some contexts, a highly incompetent performance of a practice might not be a problem, while in others a small misstep might prove costly for the practitioner.

Previous research can help demonstrate what (in)competent performances of the practice of consensus may look like. However, it is impossible to abstractly define the competent performance of a practice – the goal is to sensitise the analysis rather than provide a precise operationalisation. For this purpose, I outline three general criteria of competence that can be relevant when actors representing a non-blocking minority attempt to perform the practice of consensus so that a consensual decision becomes acceptable to them: a) being constructive by proposing a viable alternative solution; b) justifying one’s position, preferably by appealing for the common good or vital national interests; c) genuinely attempting to find support or understanding among other actors. The actual relevance of each of these criteria, as well as the consideration of other criteria, depends on the context of the situation.

Member States and their representatives are expected to “show a high degree of commitment to consensus-seeking” (Puetter 2014, 59). Research on consensus in the Council suggests how this commitment is supposed to manifest: to reach a decision at their level, national officials in the Council have to pay attention to others and learn how they can constructively contribute during meetings (e.g. Lewis 2005; De Silva and Tepliakova 2024). Officials believe that “there is a spirit of compromise” (Ławniczak 2023, 685–86) and “it is impossible to present yourself as uncompromising” (Lempp and Altenschmidt 2008, 520). What this means is that an objecting minority is not required to simply drop its opposition for the sake of consensus, nor is it given some kind of informal veto under QMV. Instead, everyone is expected to search for a compromise that is at least acceptable to everyone.

Tallberg’s (2008, 695) interviews revealed that vetoing in the European Council requires skilfully negotiating and justifying that “vital national interests are at stake”. Accordingly, the veto “is rarely seen” (Juncos and Pomorska 2011, 1105). Negotiators emphasise the weight of good arguments: “One should always add argumentation and justification” (Ławniczak 2023, 687).

Attempts to find understanding, if genuine, are usually successful – Council officials have claimed in interviews that “there is no inclination to humiliate – if you can make some concessions on someone’s behalf – you do” (Ławniczak 2023, 687–88). Member States’ representatives – from the working parties level up to the European Council – need to seek support for their positions, because isolation is something that a Member State should avoid (cf. Smeets 2016), regardless of its size (Kirpsza 2021).

3. Method of analysis and data sources

3.1. Analyticist process-tracing

Process-tracing is an established part of the qualitative methods toolbox in political science. It is usually described as a method which “examines the observable implications” of mechanisms it aims to trace in a given case “to test whether a theory on these mechanisms explains the case” (Bennett and Checkel 2015, 7–8). Understood this way, the method attempts to identify a mechanism, or a chain of thereof, which links the causes and the outcomes (George and Bennett 2005).

This “mainstream” (or “regularity”) understanding of process-tracing is difficult to combine with interpretive, practice-oriented methodology due to ontological incongruence. However, the method’s core idea – exploring and unpacking social mechanisms – remains appealing for interpretive researchers. Several attempts to reconcile process-tracing and interpretive research have been made (e.g. Norman 2015; Pouliot 2015; Guzzini 2017; Norman 2021). In this paper I follow what Meegdenburg (2022) calls an “analyticist approach” to process-tracing. The method allows me to conceptualise, empirically develop, and assess the

portability of a mechanism that can be helpful in understanding the dynamics of (in)competent performance of an important social practice.

“Analyticism” in analyticist process-tracing refers to an analyticist ontological approach, which in the context of international studies has been comprehensively described by Jackson (2011), as one of four philosophical ontologies in the discipline. Analyticism looks at theories as conveying “a sense of the (...) relations of things”, instrumentally utilising theoretical constructs “to order the complex chaos of empirical reality” (Jackson 2011, 113). In analyticist process-tracing, mechanisms are treated as such theoretical constructs and are similar to ideal types in their function (Meegdenburg 2022; cf. Jackson 2011, 142–46).

While analyticist mechanisms are not strictly speaking “causal mechanisms”, they nevertheless describe how a causal-like “motion” is transferred by a given set-up, in “similar ways over a variety of situations” (Meegdenburg 2022, 408). Similarly, to conventional process-tracing, each step of a mechanisms is conceptualised by describing entities engaged in activities (cf. Beach and Pedersen 2013, 49). By emphasising the multifinality of mechanisms and leaving more room for agency and meaning-making, however, the analyticist approach is more compatible with interpretive studies oriented on meaning and practice. An analyticist mechanism, as an analytic construct, is meant to help order reality, in particular serving to recognise, compare, contrast, summarise and communicate across different cases (Meegdenburg 2022).

In the following section, I apply this method in three steps. First, I propose an analyticist mechanism that is meant to capture the ways a valued culture is defended against the threat of devolving because of an insufficiently competent performance of a crucial practice. I have conceptualised the mechanism by applying notions derived from practice theory in abductive engagement with previous empirical research and preliminary analysis of the mechanism’s potential instantiations – a process which is continued below with a more detailed analysis of two of these instantiations (cf. Kurowska 2020, 99–100).

I then present an instantiation of this mechanism – Donald Tusk’s re-election as the president of the European Council. While an analyticist mechanism is a short, simplified ideal type, a concrete instantiation is contextually embedded, capturing a specific chain of events. Providing an instantiation serves to trace the mechanism in action in a specific context and showcase its typical characteristics (Meegdenburg 2022). It can also help to improve the conceptualisation of the mechanism.

Finally, I discuss the mechanism’s portability by discussing a case of selecting the European Commission president in 2014. Mechanisms, understood as analytic constructs, should in principle be portable, able to travel between different cases while providing the means to “grasp, describe, and study” them (Meegdenburg 2022, 409). The aim of this subsection is to refine the analytic construction of the mechanism and capture the idiosyncratic nature of the instantiation (Meegdenburg 2022).

3.2. Data limitations in studying the European Council

The European Council is probably the least researched of the EU's main institutions, mainly due to its highly insulated operations, which are conducted by top-tier European politicians. Tallberg's study on bargaining in the European Council (2008), for which he interviewed heads of state or government, is therefore all the more valuable. More recent, empirical studies include analyses of European Council conclusions (Carammia et al. 2016; Ullrichova 2023). These are the only publicly available records of the EC's summits. Other researchers have focused on the European Council's relations with other institutions, which allows them to use a wider array of sources, including interviews with people affiliated with other institutions and documents exchanged between the different institutions engaged in the cases under analysis (Bocquillon and Dobbels 2014; Witkowska 2021; Crum 2023; Smeets and Beach 2023).

For this paper, the preferred sources would be interviews with participants of the events I want to analyse. Such interviews would be extremely difficult to arrange, however, and even if they were arranged they might not turn out to be reliable due to the political interests of the interviewees and the fact that the analysed events took place many years ago. I was able to ask about the main instantiation, Tusk's re-election, during an interview with a Polish official tasked with coordinating Poland's involvement in the European Council. The official emphasised that the processes behind this type of decision (high-ranking appointments) are entirely informal ("There is nothing on paper, there is no item on the agenda"), and so the ministerial officials are bypassed in favour of politicians.¹

Due to these limitations, my study draws on various materials gathered in a wide survey of media reports, opinion pieces and analyses by journalists and academics. To find available data, I browsed the archives of newspapers, opinion weeklies and online media from the relevant time periods, and conducted two rounds of general web searches – in 2020 (Tusk's re-election) and 2022 (Juncker's nomination). I searched for materials in English and Polish – the latter being especially important for the primary instantiation. These materials serve two main purposes. First, they allow me to reconstruct the sequence of events in each of the analysed cases, including the actions and statements of their participants. Second, they show how the events were interpreted and understood by expert observers. These data allowed me to propose, with some empirical grounding, my own interpretations of the actor's performances during these events (cf. Bueger 2014).

¹ Interview with a Polish official, Warsaw, 19 October 2023.

4. Failed consensus-seeking and the culture of consensus

4.1. The analyticist mechanism

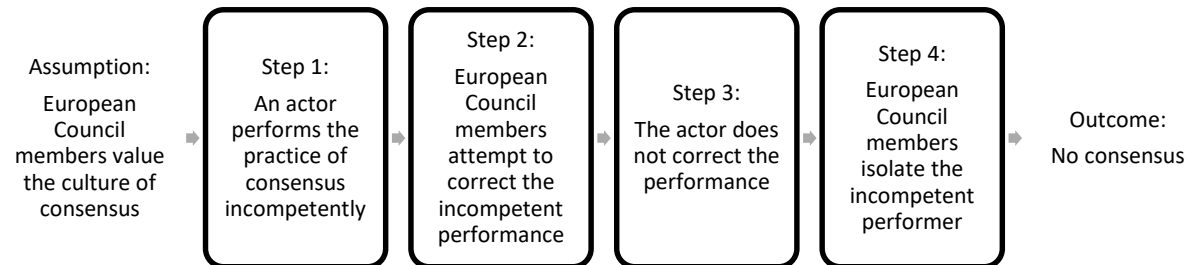
The analyticist mechanism I propose here assumes that within the European Council there is a culture of decision-making, “the culture of consensus”, which is valued by its members. This assumption is important because if the culture wasn’t there or wasn’t valued, the rest of the mechanism would not make much sense. This culture materialises through “the practice of consensus” – the complex of practices related to consensus-seeking introduced above.

The first step of the mechanism happens when an actor performs this practice incompetently. Competence is not a binary variable, but a spectrum with many degrees between its extremes. For the purpose of this analysis, “incompetently” means that the practice was performed insufficiently competently in a given context. The threshold of sufficiency can differ greatly for a variety of reasons. In general, incompetent performance might entail various failures at communication or going beyond the limits of what is appropriate. Simply having a different position does not constitute incompetence, but not being able to justify the position, propose alternatives or find understanding among others does.

The mechanism continues when the European Council members attempt to correct the performance (step 2). They might resort to various means such as signalling that the performance is incompetent (for example by not acknowledging the failed attempts) or offering a way out of the situation. If the actor does not alter their performance to meet the standards of competence (step 3), the mechanism moves to its concluding, fourth step: the European Council members isolate and, if possible, outvote them.

Both the European Council members’ attempts at correcting the incompetent performance and their ultimate response to it are brought about by their assumed attachment (which could be instrumental, normative or habitual) to the culture of consensus. The specific means of correction and isolation would be different in each case but could be similar to the components of stigmatisation: labelling (emphasising and simplifying certain differences), stereotyping (linking labels to negative characteristics), separation (differentiating “us” from “them”), status loss and discrimination (including rejection and unequal treatment) (Link and Phelan 2001). Figure 1 shows the mechanism’s steps and outcome: lack of consensus.

Figure 1: Analyticist mechanism



In the following sections, I analyse three cases when the European Council made decisions which formally require a qualified majority but are nevertheless almost always decided by consensus, both within a relatively short time period between 2014 and 2019. While most decisions taken by the European Council require unanimity, I focus here on those that don't, for three reasons. First, a lack of consensus would result in no decisions being taken, which would make the material for analysis even scarcer. Second, the final steps of the mechanism I propose rely on the *possibility* of extreme isolation and outvoting. Third, it opens up the potential for the mechanism to be useful in analysing decision-making in the Council, where (at least formally) qualified majority voting prevails.

The first instantiation of the mechanism is the re-election of Donald Tusk as the European Council's president in 2017, which marked the first and only time the European Council has elected its president by qualified majority rather than unanimously. This unusual event inspired the work presented in this paper, making it the primary instantiation. The need to better understand it and move beyond broad-strokes theorising was the motivating factor for the formulation of the above mechanism. The analysis of this case, which I present below, serves to improve the conceptualisation of the mechanism and is therefore more detailed. It is divided into sections corresponding to the steps of the mechanism.

Next, I compare Tusk's re-election with two other cases that have happened in the same decade: the nominations of the European Commission's presidents in 2014 and 2019, which show different outcomes when a non-blocking minority opposes a proposed candidate. This part of the analysis allows me to explore the extent of the proposed mechanism's portability – its potential utility in explaining events other than Tusk's re-election.

4.2. Primary instantiation: Donald Tusk's re-election

Donald Tusk was elected for a two-and-a-half-year term in 2014. Most EU Member States seemed satisfied with Tusk's accomplishments during that time. For example, an unnamed Spanish diplomat is quoted saying "You can trust him, he's dependable, he can keep a secret" (Heath 2016). Crucially, Tusk had strong support from the Czech Republic, Hungary and Slovakia, Poland's counterparts in the Visegrad Group. This didn't mean, however, that Tusk's re-election was guaranteed. From Autumn 2015, Poland's government was led by the Law and Justice party (PiS), whose main antagonist in Polish politics had been Tusk's Civic Platform (Henley 2016). France and Italy likewise had reservations about his work as the European Council's president (Heath 2016). Moreover, in January 2017, after Antonio Tajani became the President of the European Parliament, left-leaning politicians expressed dissatisfaction that the centre-right European People's Party nominees held the presidential positions in both the European Commission and the European Council, and suggested they could rectify the imbalance by not renewing Tusk's mandate (*Euractiv* 2017b).

Assumption: European Council members value the culture of consensus

All three previous elections of the European Council's president had been unanimous (Herszenhorn 2017). According to Euractive, "diplomats say that leaders place [great] store on finding a consensus choice when it comes to the presidency of their own summit institution, and would prefer not to vote on it" (*Euractiv* 2017a). The EU governments might have been unwilling to engage in a quarrel over the position (Henley 2016), but given the circumstances presented above, it seemed feasible for the Polish government to push to oust Tusk by relying on the culture of consensus and the established norm of electing the European Council's president unanimously.

Step 1: An actor performs the practice of consensus incompetently

In an October 2016 interview, Jarosław Kaczyński, Chairman of the Law and Justice party, said that "Someone like Donald Tusk should no longer be president of the European Council", but did not definitely rule out Polish support for his second term (Grodecki and Jabłońska-Andrzejczuk 2016). Two months later, Poland's foreign minister, Witold Waszczykowski said in an interview that he "cannot imagine a situation where [Tusk] can run without the support of his own government" and that Tusk "has time until May, when the decisions will be made. Tusk must try to gain the support of the Polish government, because only then will he be a credible candidate" (Baranowska 2016).

This quasi-ultimatum was dropped just two weeks later, when Kaczyński announced that Tusk would not be afforded the Polish government's support (*Do Rzeczy* 2016). With the exception of communicating an unwillingness to support Tusk, I have found no evidence the Polish government took any diplomatic action on this issue during late 2016 and early 2017 (Barker and Foy 2017). In January, prime minister Beata Szydło

claimed that the matter did not depend on the position of the Polish government (*Gazeta Prawna* 2017). If the Polish government in fact wanted to block Tusk's re-election, it seemed to believe that the "culture of consensus", one of the foundations of intergovernmental decision-making in the EU, would allow it to effectively veto Tusk's candidacy on the grounds of reservations it had, especially regarding his neutrality. According to Politico, the Polish government "insisted that no candidate should be elected over the objections of his or her home country" (Herszenhorn 2017). However, Szydło's government seemed to do little either to communicate and justify its position in advance to its partners or to propose a constructive solution (such as declaring support for another candidate, who would be put forward by a group of countries).

To summarise this step, I will double back to the general criteria of competence established above: the Polish government's performance was incompetent because: a) it was not constructive and did not propose credible alternative solutions; b) being unable to link to common European or vital national interests, it failed to convincingly justify its position; and c) it did very little to find support or understanding among other EU governments.

Step 2: European Council members attempt to correct the incompetent performance

Usually, both in the Council and the European Council, a justified reservation of even a single country makes a difference. Why was the Polish reservation dismissed in this case? As discussed above, "the culture of consensus" is not a "veto culture". To remain a functional and stable part of the EU's intergovernmental decision-making, consensus-seeking needs to be a social practice which, like any other practice, is socially evaluated whenever it is performed. Only when a practice is performed competently enough can it provide its practitioner the desired results – otherwise both the practice and the associated culture devolve into something else. In the case of the practice of consensus it is especially important, as devolution towards an "informal veto" arrangement could threaten the effectiveness of decision-making at the EU level. As mentioned earlier, even if a veto is formally possible, its use is limited in practice (cf. Tallberg 2008).

Various efforts were made to correct the Polish government. For example, some diplomats interpreted Warsaw's declarations as not so much anti-Tusk as anti-EU – as part of an agenda meant to undermine the EU institutions (Heath 2016). Labelling the Polish government as "anti-EU" may have been an attempt to make the Polish government realise the incompetence of its performance. Wojciech Przybylski provides another example with his remark that "the general assumption was that Warsaw would not oppose the re-election if it came to a vote" (Przybylski 2017). Doubting that the Polish government could actually oppose the election of Tusk can also be read as a means of correcting its performance.

Step 3: The actor does not correct the performance

However, little happened between the December declarations of Waszczykowski and Kaczyński and 4 March 2017, when, just a few days before the summit, the Polish government proposed a new candidate, Jacek Saryusz-Wolski, for the position. Saryusz-Wolski was a member of the EP that had, until that moment, been affiliated with Donald Tusk's own party, Civic Platform (EPP). The move surprised everyone, even if the candidate's lack of credibility threw it into question. While Saryusz-Wolski had considerable experience in European matters, he had never held a top government position, widely seen as a requirement for the post (*Euractiv* 2017a).

The Polish political scientist Tomasz Kownacki points out that for the Polish government to succeed in blocking Tusk's re-election, it would have needed to conduct intense bilateral consultations with major EU partners and provide reasons for its position (Kownacki et al. 2017). This apparently did not happen, as the last-minute candidacy of Saryusz-Wolski suggests.

Step 4: European Council members isolate the incompetent performer

Following the announcement of Saryusz-Wolski's candidacy, Manfred Weber, the leader of the EPP in the EP, commented: "It is symptomatic that the Polish government once again pursues only a Polish domestic policy agenda and has completely abandoned any constructive ambition at the European level" (*Euractiv* 2017a). This is an example of isolating the wayward actor by means of stereotyping. Firmly rejecting an incompetent performance and isolating the offending actor serves to strengthen the discourse regarding what is normal or appropriate, and protects the prevailing culture (cf. Adler-Nissen 2014, 149).

According to *The Guardian*, Hungary's prime minister, Viktor Orbán, "tried and failed to forge a compromise between Poland and members of the European council" (Rankin 2017). This could be seen as perhaps the final attempts at correcting the Polish government's performance, underpinned by fears of status loss and separation. The Polish government's closest ally, Orbán eventually supported Tusk's re-election, showing the extent of its isolation.

As no formal procedure exists for conducting voting in the European Council, the Polish delegation did not have any way of ensuring their last-minute candidacy would even be taken into account. The meeting's Chair, Prime Minister Joseph Muscat of Malta, proposed Tusk's candidacy first and asked if anyone objected to his re-election (Czaputowicz 2017). This is a clear example of isolation by outvoting (separation), accompanied, arguably, by discrimination. Interestingly, according to Politico, quoting an unnamed EU official, "in a sign of unease over potential procedural challenges, officials from the European Council's legal department were in the room during the vote" (Herszenhorn 2017).

Outcome: There is no consensus (but there is stigma rejection)

Donald Tusk was re-elected with twenty-seven votes for his candidacy and one against. According to Politico, “Polish Prime Minister Beata Szydło said her colleagues were undermining a fundamental principle of EU governance” (Herszenhorn 2017). This is an interesting case of how an actor can react in such situations with stigma rejection or even counter-stigmatisation (Adler-Nissen 2014, 155). Polish European studies researchers commented that the summit proved to be “an opportunity to demonstrate Warsaw’s uncompromising attitude” and ostensibly defend “EU principles”, but also emphasised the domestic context of the Polish government’s actions, interpreting its failed veto attempt as motivated by Kaczyński’s political vendetta (Kownacki et al. 2017).

The events left the Polish government irritated, and saw Szydło attempting to block the summit conclusions (conclusions by the President were released instead (President of the European Council 2017)), while foreign Minister Witold Waszczykowski said “We know now that it [the EU] is a union under Berlin’s diktat” (Rankin 2017). Later, he also claimed that the election itself might be questioned “at the level of the EU law” (Dziennik Gazeta Prawna 2017). Jacek Czaputowicz, a professor of European studies who later became a foreign minister in the PiS government, wrote in a right-wing weekly: “The decision [...] undermines the principle of loyal cooperation, destroys trust among partners, and may have a negative impact on the functioning and perception of the European Union in the future” (Czaputowicz 2017). These are further interesting examples of how an incompetent performer can relate to a mechanism’s primary outcome, with stigma-rejection potentially being its secondary outcome.

Members of the European Council and other actors involved in the process were sending Poland signals – in particular expressing hope that the country would accept Tusk’s re-election after all. When the Polish government’s performance of the practice of consensus failed to improve, it put forward Saryusz-Wolski as its candidate. With no compromise in sight, others had little choice but to unequivocally reject Polish demands by isolating and outvoting it. The Polish government reacted by trying to reverse the stigma and blame others for not respecting EU principles.

Analysis of this instantiation offers several lessons. First, even though the mechanism is described in a number of consecutive steps, the reality of this instantiation proved slightly more fluid. In particular, the different forms of correction and isolation were not as neatly ordered temporally as the steps of the mechanism call for. Nonetheless, the primary function of the mechanism is to convey its analytically generalised and cumulative effects. In this regard, the mechanism was indeed useful. Second, the continuity of the culture of consensus was maintained by introducing a change in the performance of the practice of consensus, which in this case, in accordance with an established norm, was expected to bring about the unanimous election of the European Council’s president. This previously established expectation could not be met, and the effects of the

practice's performance were different. Third, as observed above, a secondary outcome of stigma-rejection should be added to the description of the mechanism, as it expresses an important aspect of the actor-centred dynamics emphasised here.

4.3. Exploration of the limits of the mechanism's portability

Appointment of the European Commission president in 2014

On 27 June 2014, the European Council proposed Jean-Claude Juncker for the position of European Commission's president in spite of opposition from the prime ministers of the United Kingdom and Hungary. This was "a humbling defeat for Britain's prime minister, David Cameron" (Kanter 2014), who pushed for a vote and lost – breaking the informal rule of unanimity in such decisions (BBC News 2014).

Simon Usherwood (Usherwood 2014) lays out three main reasons for the British stance. First, Juncker "comes across as an old-school federalist", despite not really supporting a federalist agenda for Europe. Second, his personal flaws made it easy to show him as "the embodiment of Brussels's worst qualities" and of "Europe as an 'elitist project'" (Winkler 2014), a member of "haughty elite unable or unwilling to address the concerns of everyday citizens" (Kanter 2014), a person unable to "lead EU reform" (Watt and Traynor 2014). Third, the UK government opposed the whole *Spitzenkandidat* process, which was supposed to bind the appointment of the Commission's president with the results of the European Parliament elections (Usherwood 2014). Cameron insisted that this process lacks legitimacy (Watt and Traynor 2014). He also accused Juncker of not being interested in fighting the EU's supposed "bureaucratic overreach" (Kanter 2014).

The British position did not garner much support in most of the EU's capitals. Juncker was not seen primarily as "a federalist", but rather as "someone who works towards what is possible, rather than for some ideological holy grail" (Usherwood 2014). However, the prime ministers of Hungary, the Netherlands and Sweden were openly critical of Juncker's candidacy (Vogel 2014) and seemed to share Cameron's concerns regarding his "federalist" leanings (Daddow 2014). The leaders of Italy and France also "signalled opposition" (Pop 2014).

Three weeks before the European Council's meeting, Cameron discussed the issue with the leaders of Germany, the Netherlands and Sweden, and was supposed to have previously warned Angela Merkel that "a Juncker appointment would accelerate moves toward a British exit" (Vogel 2014). Prime Minister Cameron even suggested that Juncker's selection would destabilise his government (Pop 2014). In fact, Merkel had not been a Juncker supporter from the outset and, according to "The Telegraph", was probing the candidacy of Christine Lagarde with France (*The Telegraph* 2014). However, she changed her mind "after a domestic backlash" (Watt and Traynor 2014).

In the end, the UK sought Sweden's support, but it never materialised (Murphy 2014). Just one day before the vote, a French official claimed that "he was assured by senior British figures at a meeting in London that the Cameron government would not try to halt Mr. Juncker's ascendancy" (Kanter 2014). This is an instance of denying the viability of an actor's publicly stated intentions. One commentator claimed that Cameron's position resulted in the UK "being almost friendless in Europe" and signalled that the Cameron government rejected the European idea (Warren 2014). It also shows it being isolated through stereotyping and separation.

The Conservative party lost the EP elections in the UK, with the eurosceptic UKIP taking first place, which might be why Cameron was eager to prove he was an important player in EU politics (Riegert 2014). At the very last moment, he attempted to block Juncker's nomination with "strong and passionate intervention" and called it "a sad moment for Europe" (Watt and Traynor 2014). However, Victor Orbán turned out to be Cameron's only ally in opposing Juncker's appointment. Orbán's party, Fidesz, despite its membership in the pro-EU centre-right European People's Party (which selected Junker as its *Spitzenkandidat*), was becoming increasingly eurosceptical and engaged in anti-EU rhetoric (Wachs 2014).

After the vote, eurosceptic British politicians angrily denounced EU leaders, accusing them of cowardice and not being "prepared to say in public what they said in private" (another example of the isolated actor's reaction). Meanwhile, the leader of the opposition commented that "David Cameron (...) has become toxic" and other EU leaders "doubt his motivations" (Sky News 2014).

In a way, this case seems very different than Tusk's re-election. The UK's government was performing the practice of consensus much more competently than its Polish counterpart, seeking as it did to find support for its position among other actors. However, this competence was limited to the material aspects of the practice – the multiple meetings with potential allies and talks with other important players. Other actors signalled to Cameron that his "veto" lacked the necessary justification (one of the criteria of competence presented in previous sections). The ones given, while seemingly referring to national interests (threat of Brexit) and European-level issues (Junker's supposed federalist leanings), were too far-fetched to be convincing. Finally, there are no reports of the UK government promoting credible alternative candidacies, and its opposition to the *Spitzenkandidat* process could have been seen as unconstructive.

When Cameron decided not to back down, he was isolated (only Victor Orban supported him) and subsequently outvoted. This instantiation shows that the mechanism can be ported to other similar situations, in particular ones where the poor performance of the practice of consensus is rooted in unconvincing domestic constraints. Moreover, it emphasises that experience does not guarantee competent performance: Cameron had much more experience with European Council negotiations than Szydło, and the UK had been a Member State for much longer than Poland.

Appointment of the European Commission president in 2019

After the 2019 elections to the European Parliament, it wasn't clear who would be selected as the new president of the European Commission. Although the EPP "won" the elections, its *Spitzenkandidat*, Manfred Weber, lacked support from the potential coalition partners needed to get a parliamentary majority in favour of this candidacy ('Macron: "No Majority for Mr. Weber" and Other Spitzenkandidats', 2019). In the end, on 2 July 2019, the European Council chose Ursula von der Leyen (*Germany's Ursula von Der Leyen Nominated to Lead EU Commission*, 2019). However, before that, several other candidates were considered, including Frans Timmermans, the centre-left Socialists and Democrats' *Spitzenkandidat*. This left a large portion of the European Parliament dissatisfied (Oltermann, 2019) and the von der Leyen candidacy barely got the required majority for confirmation (Boffey, 2019b).

Kenneth Armstrong (2019) links this result to the overall failure of the *Spitzenkandidaten* process: "with Weber's candidacy failing to get traction, the slate was wiped clean and an old-fashioned process of political horse-trading took its place", while Mark Dawson (2019) points towards a "consociational concern for sharing authority". Here, I would like to focus on the successful stopping of Timmermans's nomination by a non-blocking minority coalition made up of the V4 (the Czech Republic, Hungary, Poland, Slovakia) and Italy. Making Frans Timmermans the president of the Commission was part of a compromise deal between the leaders of Germany, France, Spain and the Netherlands. It would have (at least partially) saved the *Spitzenkandidaten* process and secured the support of the European Parliament (Keating, 2019a).

Poland was among the strongest opponents of Timmermans's candidacy, as he had been cast as an anti-Polish villain due to his handling of the Polish government's rule of law violations (Cianciara, 2022). Poland's prime minister Mateusz Morawiecki called Timmermans "the candidate who is strongly dividing Europe" and "doesn't understand central Europe" (Boffey, 2019a). Poland and the rest of V4 did not seem "interested in being represented at a high level in a union they would like to roll back" (Janning, 2019). However, Poland and Hungary hoped for "a new opening" and that the new Commission would be less interested in pushing the rule of law disputes against those countries – for which Timmermans was responsible in Juncker's commission (Zalan, 2019). As one commentator notes, Victor Orban "bragged in Hungary that he and his illiberal allies had 'won' the summit by blocking Timmermans and choosing Von der Leyen" (Keating, 2019b). Interestingly, this point of view was shared by some of the Timmermans's candidacy defenders. Garvan Walshe insisted in *Foreign Policy* that "If Europe's leaders care about European democracy, they need to call the Visegrad Group's bluff and support Timmermans's candidacy", painting the disagreement as one between the liberal democracy and its enemies (Walshe, 2019).

Some analysts speculated that the European Council tried to “stick with the informal norm of unanimous decision-making because they worried that overriding the objectors might provoke them to resort to obstructive political tactics” (Hennessy, 2019). It is also likely that Timmermans’s nomination failed mainly due to the (not always openly voiced) opposition of smaller countries governed by parties affiliated with the EPP (Ireland, Bulgaria, Croatia, and Latvia). In other words, the lack of agreement within the largest European party made the proposal unviable. Indeed, Ireland’s prime minister Leo Varadkar said that “the vast majority of the EPP prime ministers don’t believe that we should give up the presidency of the Commission quite so easily, without a fight” (Keating, 2019a).

The analyticist mechanism is not applicable in this case, a fact that highlights the limits of its straightforward portability: It is only applicable if several of the mechanism’s steps can be identified. In this case, the very first step of the mechanism hasn’t occurred: Poland and Hungary, the countries most strongly opposed to Timmermans’s nomination, performed the practice of consensus skilfully. They acted constructively with regard to alternative solutions, which included utilising the party politics at the European level and the discontent within the EPP. They justified their position with reference to European unity and, most importantly, they successfully constructed a broader coalition of explicit dissenters. However, this event, seen through the analytic lens of the mechanism, including its instantiations described above, provides an understanding of how the previously isolated actors can learn to accommodate a practice and achieve their aims in subsequent iterations.

According to Lovato and Maurer (2022) the competent performance of practices allows an actor to wield “process power”, which in this case meant avoiding being disciplined by others. Hungary and Poland can be said to have learned from their previous failures (the Juncker nomination and Tusk’s re-election, respectively) and, through competent performance, they were able to safeguard themselves against being outvoted. This is important in the light of the rise of illiberalism within the EU, which is often identified as one of the Union’s greatest challenges (Hooghe & Marks, 2019; cf. Tosiek, 2023): illiberal governments are not destined to use the tactics of unpolitics (De Silva & Tepliakova, 2024) or non-compliance (Closa & Hernández, 2024), but can learn to accommodate the rules and standards of competence to their advantage.

Table 1 summarises the findings, compares the two instantiations, and emphasises the typical characteristics of the mechanism. It does not include the third case, as it was not an instantiation of the mechanism.

Table 1. Summary of the mechanism's instantiations.

Typical elements of the mechanism	Specific contents – Tusk's re-election	Specific contents – Juncker's nomination
European Council members value the culture of consensus.	All previous elections were unanimous. Consensus over the presidency of their own meetings is important.	Informal rule of unanimity.
An actor performs the practice of consensus incompetently.	Insisting on the right to block Tusk's candidacy. Polish government unable to provide persuasive justification or constructive alternative solutions.	UK government unable to provide persuasive justification of its position, focusing on domestic constraints.
European Council members attempt to correct the incompetent performance.	Labelling performance as "anti-EU". Denying the possibility of intended performance.	Stereotyping actor as being against the European ideal. Denying the possibility of intended performance. Lack of support despite diplomatic efforts (separation).
The actor does not correct the performance.	Saryusz-Wolski's candidacy.	Cameron's last-moment "strong and passionate interventions".
European Council members isolate the incompetent performer.	Stereotyping actor as caring only for domestic policy. Loss of closest allies (status loss). Outvoting (separation and discrimination).	Loss of allies (status loss). Outvoting – only Hungary supported the UK position (separation).
There is no consensus.	Tusk re-elected without unanimous support.	Juncker proposed without unanimous support.
Incompetent performer rejects the stigma.	Reversing the blame, accusing others of breaking norms.	Accusing others of cowardice and hypocrisy.

5. Conclusions

This paper utilises analyticist process-tracing to understand certain aspects of the varied outcomes of decision-making in the European Council in the context of the culture of consensus. I have developed my

argument within practice theory. Because the practice of consensus can be performed more or less competently, it was important to look at the consequences of incompetent performance. I argue that using formal provisions which allow for qualified majority voting is the last resort of opposition to incompetent performance and is intended to protect the valued culture from changing. This casts the ruptures of consensus, such as occurred with Donald Tusk's re-election in 2017, as preserving, rather than undermining, the culture of consensus.

In the paper, I have presented my practice-oriented approach, explained the use of analyticist process tracing, and applied it to develop a mechanism which describes some of the consensus dynamics in the European Council. I have analysed two instantiations of the mechanism – the re-election of Donald Tusk as the European Council's president in 2017, which has been the primary instantiation, and the nomination of the European Commission's president in 2014, which has allowed me to explore the proposed mechanism's portability. Another case, the nomination of the European Commission's president in 2019, presented an opportunity to discuss the limits of the mechanism's portability and the ways in which it can help emphasise the possibility of learning by previously incompetent actors. The analysis provides insights regarding the conceptualisation of the mechanisms and its usefulness.

The mechanism involves an incompetent actor and others who correct them, and it is divided into several steps. The analysis has shown that the identification of these two kinds of actors is analytically useful and corresponds to the level of empirical analysis undertaken here. However, in a more in-depth study, there might be potential for other types of actors to be involved. Performance of a practice is always relational and contextual, and there might be situations in which there is no broad agreement regarding its level of competence. Moreover, as indicated in the analysis, the clean separation of consecutive steps in the mechanism's description results from an analytical generalisation – in practice, the boundaries between the steps can be somewhat blurred and their elements can occur in different order.

The analysis has also allowed me to identify the incompetent actor's reaction to the correcting and isolating actions of other actors. Both in Poland after Tusk's re-election, and in the UK after Juncker's nomination, there were examples not only of stigma-rejection, but also of counter-stigmatisation. However, as the Timmermans's non-nomination has shown, these rejections did not preclude learning. The proposed mechanism, by focusing on actors' relations to competent performance of decision-making practices, points towards these processes and can be helpful in making clear not only how the EU's culture of decision-making can be protected from challenges but also how it can be abused by bad-faith actors. The latter might be particularly relevant for issues decided formally by unanimity, where the majority lacks the ultimate instrument of correction described here (i.e. outvoting) and needs to find other ways of dealing with challengers.

Finally, the mechanism provided a way of fulfilling one of the analytical promises of practice turn: practices can bring about change while also ensuring continuity. The analysis has shown how a change, even a rupture – moving away from a long-standing norm of deciding unanimously on matters such as the nomination of the European Council’s president – can be interpreted as instrumental to ensuring the continuity of a valued culture. Performing a practice differently can then simultaneously (and paradoxically) exhibit change and continuity, depending on how wide a perspective we are taking (cf. Feldman & Orlikowski, 2011).

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STATE-MODULATED PRECARIETY OF THE INDEPENDENT CULTURAL SECTOR. THE CONDITION OF ROMANIAN CULTURAL WORKERS

ABSTRACT: *The article discusses the concept of precarity of cultural workers who are active outside public institutions (also called independent cultural workers), through an in-depth analysis of the Romanian case. The condition of the Romanian cultural workers is defined by a structural dependency on the state, despite the existence of specific regulations, partly modeled by the European framework on the status of the artist. This dependency on state funding results in what this study terms state-modulated precarity (a condition in which cultural workers are encouraged to operate as cultural entrepreneurs while remaining dependent on seasonal public funding and insufficient regulatory and social protection mechanisms). The article also examines the mechanisms of public funding for the independent cultural sector, highlighting how bureaucratic and financial instruments can reproduce instability, as opposed to the rhetoric that promotes autonomy and creativity. The article equally situates the Romanian context within the broader European dynamics, indicating the specificities of a certain type of precarity, strongly linked to institutional and funding arrangements. The study argues that, far from being an unintended consequence, precarity is structurally embedded in cultural governance and reproduced through the mechanisms by which public support is allocated and administered.*

KEYWORDS: cultural worker; state-modulated precarity; independent cultural sector; public funding; seasonality.

1. Introduction

The cultural sector at EU level brings together a wide range of actors: artists, independent organizations, and public institutions such as museums, theaters, operas, and philharmonics. Despite their different institutional positions, these actors contribute to the production of artistic and community-oriented programmes within an increasingly competitive funding environment. Both the cultural ecosystem and its outputs are fundamentally dependent on cultural workers, whose continuous contribution shapes cultural policy at local, regional, national, and European levels. Understanding the status of cultural workers therefore requires examining their institutional role, their relationships with other actors in the cultural field, and, importantly, their relationship with local and national governments.

Extensive research in Europe and beyond has investigated the precarity of cultural labor (e.g., Banks, 2006; Gill & Pratt, 2008; McRobbie, 2009; Brook et al. 2025), showing how precariousness can emerge as an outcome of policy arrangements that coexist with discourses of creative freedom and autonomy. Within

such a framework, survival in the cultural ecosystem becomes an individual responsibility, embedded in neoliberal market logic that places at its cornerstone competition, entrepreneurialism, and self-management (Brook, Giuliani, O'Brien et al, 2025). Meanwhile, through regulation and funding schemes, the state remains involved in the cultural sector through regulation and funding schemes, without necessarily providing greater professional security for cultural workers. Bureaucratic and well-established instruments such as seasonal grant cycles operate as tools through which the state maintains a dependent and fragmented cultural workforce, one responsive to administrative and political fluctuations rather than artistic continuity (Bel-fiore,2022). This structure produces triangulation of relations: cultural independent actors struggling with chronic financial insecurity, an artistic field attempting to generate socially valuable content, a policy environment in which the state continues to shape the sector through bureaucracy, funding mechanisms and, at times, ideological direction. The central question is therefore not whether the state supports cultural work, but how the design and temporality of that support shape the conditions under which cultural workers act.

To define precarious work, it is useful to investigate the approach of the International Labour Organization (ILO), which describes precarious work as a mechanism through which employers place risks and transfer responsibilities onto workers (<https://www.ilo.org/>). Precarity means a lack of protection, and restricted access to social benefits, through limitations in the social and institutional protections available to workers. Precarious work is defined by ILO: “uncertainty as to the duration of employment, multiple or ambiguous employment relationships, lack of access to social protection and benefits normally associated with employment, low pay, and significant obstacles to unionization and collective bargaining” (International Labour Organization, 2012). By contrast, decent work seeks to guarantee stability to the worker, to grant access to fair remuneration, rights at work, and access to social protection and dialogue. Decent work is intrinsically linked to sustainable and equitable employment, while precarious work undermines these objectives as well as human dignity. Critical theorists of cultural labor argue that the institutionalization and normalization of insecurity reflect a broader neoliberal rationality in which responsibility for the profession is individualized, being removed from the state's sphere of responsibility and outsourced to everyone (Murray & Gollmitzer,2011).

In this type of social dynamic, the state plays an ambivalent role: on one hand, it withdraws from direct cultural provision under the rhetoric of market efficiency (in order to support entrepreneurship as providential solution in neoliberal society); on the other, it preserves its role as a regulator, through public funding and through highly bureaucratic mechanisms. This duality can be understood through the concept of bureaucratic neoliberalism (Ouellet,2023) and it creates a field in which artists and organizations are simultaneously empowered as entrepreneurial actors and considered mere administrative subjects. The artistic critique of hierarchy (the critique of rules that hinder artistic progress) has been progressively replaced by an ethos of

individuality- individuality as strength of artistic expression or as weakness of the precarious? (Boltanski&Chiapello, 2005). There are characteristics such as project-based creativity and self-management that depict an apparently empowering system, covering up a systemic instability. Within this logic, independent cultural workers experience a state-modulated structural precarity, in which insecurity is not primarily market-driven, shaped and reproduced through state mechanisms. This is what distinguishes state-modulated precarity from precarity generated primarily by market volatility: public institutions remain central to the survival of the sector, while the mechanisms through which support is distributed simultaneously reproduce professional insecurity. As the state remains the main funder of the cultural sector through subsidies and grants, these resources are distributed via bureaucratic procedures that reproduce dependence and inequality. The cultural field thus becomes a space of regulated vulnerability, where freedom and creativity coexist with compliance and economic fragility (Gray,2008).

To situate this discussion within a broader comparative framework, it is essential to examine how these dynamics of precarity and bureaucratic neoliberalism are manifested at the European level. The following sections present the methodology and situate the Romanian case within broader European debates on cultural labour and precarity.

2. Methodology

This study relies on a qualitative analysis of cultural policy to examine the state-modulated precarity of cultural workers in Europe and, more specifically, in Romania. The analysis focuses on four intertwined administrative levels: the European level, the national level, the Europeanized local level shaped by the European Capital of Culture (ECOC) framework, and the level of external representation of culture. Working comparatively across these scales enables the identification of a series of structural patterns that link bureaucratic funding architectures to specific and original forms of institutionalized insecurity, that are intensely experienced by cultural workers and organizations.

The empirical material employed in the analysis consists primarily of public policy and administrative documents produced by cultural authorities and funding bodies (especially from Romania). At the national level in Romania, the 2023 Statute of the Professional Cultural Worker was analysed as a key document regulating the sector. Then I turned the focus to the National Cultural Fund Administration (AFCN) an institution that supports independent cultural organizations, with emphasis on call frequency, application volumes and success rates, funding ceilings, co-financing rules, implementation calendars, and the introduction of limited multiannual schemes (with reference years 2023–2025). At the Europeanized local level, the research examined Timișoara – European Capital of Culture 2023, focusing on municipal and county instruments created to

administer the programme and on the publicly reported amounts of private sponsorships (2022–2024). At the national/externally oriented level, the study analyzes the procedures of the Romanian Cultural Institute (ICR) and the Department for Romanians Abroad (DRP) for the years 2024–2025, including calls for proposals, eligibility rules, evaluation criteria, and published outcomes. For contextualization, the study relies as well on secondary statistical sources and policy reports (Eurostat, European Parliament studies, International Labour organization studies) with the purpose of framing the European status quo and terminological baselines (precarious work, self-employment, bogus self-employment).

Data used in the article can be grouped in three thematic categories: a) funding criteria and their justificatory narratives; b) funding dynamics, namely the seasonality, timing, and duration of implementation windows and c) the institutional and professional consequences of these funding arrangements for cultural workers and organizations. Analytically, the study combines policy and funding document analysis with critical discourse analysis of the official narratives that accompany calls, guidelines, and managerial procedures. This is complemented by a descriptive examination of temporal cycles and administrative requirements that shape work rhythms and contribute to income instability. The triangulation of policy texts, administrative rules, and descriptive indicators allows us to link conceptual claims of precarity and state-modulated vulnerability to empirically observable mechanisms.

The research is limited by its focus solely on publicly accessible documentation and officially reported figures, without access to internal documents of institutions and therefore cannot adjudicate individual selection decisions or unrecorded informal practices. The temporal focus on 2023–2025 (with necessary references to earlier European Capital of Culture milestones) is also limited, but relevant for comprehending challenges and characteristics. These boundaries, however, are consistent with the article's objective: to reveal how formal funding architectures and their temporalities produce and reproduce state-modulated precarity in Romania's cultural sector. In addition, I draw on my own professional experience in the independent cultural sector in Romania. This reflexive professional perspective allows me to interpret policy and funding mechanisms not only through their formal documentation but also through lived familiarity with their procedural and affective dimensions. The analysis therefore focuses not only on the existence of public funding mechanisms, but on how their design, timing and administrative requirements shape professional continuity and insecurity.

2. The European Status Quo

In 2024, cultural employment accounted for approximately 3.9% of total employment in the EU (Eurostat, 2024). To address the precarity of independent cultural workers, multiple regulations have been initiated across Europe to define the status of artists and cultural workers and provide solutions for the challenges

in the sector. However, as the European Union's competences in cultural policy are only supporting competences (limited competences), its influence remains largely normative rather than legislative when it comes to working conditions. In the spirit of policy coordination, several member states have nevertheless adopted statutes of the artist, each adapted to national specificities and focusing on the needs of the cultural workers (including Romania). These regulations respond to several characteristics associated with precarious cultural labour, including irregular working patterns, non-standard contracts, multiple employment, unpredictable income and difficulties in accessing consistent social protection.

Cultural workers are more likely than the general workforce to be self-employed, part-time, and multi-employed across different sectors and countries. In 2022, 31.7% of workers in the EU's cultural and creative industries (CCIs) were self-employed-compared with 13.8% in the total economy (Summary of Outcomes-Action Group on Working Conditions in the Cultural and Creative Sectors, 2023). In addition, the OECD (Policy Responses to New Forms of Work, 2019) defines "bogus self-employment" better known as false or dependent self-employment, as a situation where workers are registered as self-employed but, in practice, function as employees, a form of employment also found in the cultural sector, which may transfer employment-related risks and social protection costs from employers to workers.

At EU level as well as in most EU countries, the cultural worker is often assimilated to the artist (even if cultural labour includes a range of other service-oriented professions: managers, organizers, promoters, curators, etc). Especially because of this reduction of the sector to the artist, it is relevant to discuss the European understanding of the status of the artist. The 1980 UNESCO Recommendation Concerning the Status of the Artist defines an artist as: "Any person who creates or gives creative expression to, or re-creates works of art, who considers artistic creation an essential part of life, who contributes to the development of art and culture, and who seeks recognition as an artist, whether or not bound by an employment relationship" (<https://unesdoc.unesco.org/ark:/48223/pf0000382658>). Within the EU, however, there is no unitary definition of the artist, multiple national definitions coexist. Member States variously define artists through: membership in professional associations (e.g., Germany), peer or expert recognition (e.g., the Netherlands), tax authority registration (e.g., Ireland), artistic output (e.g., France, Ireland) or nature of artistic activity (e.g. Romania) (Employment characteristics and undeclared work in the cultural and creative sectors, 2024). These different approaches reflect the lack of a common European framework for artistic labor rights. As the European Parliament's 2021 study about Artists and Cultural Workers and the Post-COVID-19 Cultural Recovery notes, this fragmentation hinders access to social protection and mobility for artists operating transnationally. Despite European-level initiatives addressing working conditions in the cultural sector, the cultural labour market continues to rely extensively on hybrid and non-standard forms of employment (Eurostat, 2024). Focusing on the *status of the artist* is relevant because this category has historically provided the main normative

and policy reference for the entire field of cultural labour.

Recent findings from the European Expert Network on Culture and Audiovisual (EENCA) study *The Status and Working Conditions of Artists and Cultural and Creative Professionals* (2024) confirm the intrinsic relation between the status of the artistic and that of the cultural worker. The report highlights that individuals working in the cultural and creative sectors “are more likely to be self-employed, freelancers, employed short-term, or in a combination of employment and self-employment,” leading to “precarious working conditions, irregular income and limited access to social security” (*The Status and Working Conditions of Artists and Cultural and Creative Professionals*, 2024). This European context shows that precarity is a broader characteristic of cultural labour; the Romanian case, however, raises a more specific question concerning the role of the state in shaping and reproducing this insecurity through public funding and regulatory mechanisms.

3. The Romanian case

Structural patterns of precarity have been identified through the analysis of the European framework, while the degree and form of state involvement vary considerably across national contexts. Romania, a post-socialist country, represents a particularly revealing case, as the cultural sector remains overwhelmingly dependent on public funding while relying on a bureaucratic system that reproduces both institutional inflexibility and the economic vulnerability of cultural workers. The next section explores mechanisms that support the *state-modulated precarity*, through an analysis of relevant institutions, funding mechanisms, and labour conditions of cultural workers.

This section draws upon critical cultural policy theory (Menger 2015, Banks 2006, Belfiore 2002) to conceptualize the structural condition of state-modulated precarity in post-socialist Romanian cultural sector. More precisely, I examine a form of institutionalized insecurity affecting independent cultural workers and organizations operating outside the formal institutional framework, whose existence is strongly dependent on public funding distributed through bureaucratic channels. The concept emphasizes the dual nature of cultural dependence: economic dependence on subsidies/grants or any type of public funding that is available, and symbolic dependence on state-sanctioned legitimacy.

The dependence of the so-called independent cultural organizations and cultural workers on public funding creates asymmetrical relations of power between government institutions and these cultural organizations, mirroring what Engelstad describes as neo-corporatist workings of cultural policy (Engelstad, 2017). Independence, in this context, therefore, describes an institutional position rather than financial autonomy from the state.

4. Legal framework for cultural labour in Romania

Under Romanian law, cultural workers operate within a hybrid legal framework that combines elements of labour law, copyright legislation, and freelance contracting (Ministerul Culturii- *Registrul lucrătorilor culturali profesioniști*, 2023). Many artists, performers, and independent cultural professionals are registered either as self-employed individuals (PFA) or small enterprises and thus are treated as autonomous economic actors rather than employees. Even with the adoption of Law no. 346/2023 on the Statute of the Professional Cultural Worker, the practical implementation of social rights remains largely individualized. Even if the law formally recognizes artistic and cultural work as legitimate professional activity and grants access, in principle, to social insurance, health coverage, and pension schemes, these benefits are not automatically accessible. They are conditional on the worker's own contributions and administrative compliance, rather than being guaranteed through collective mechanisms or institutional intermediaries.

This legal framing, in line with the public discourse that praises autonomy, reflects a broader tension between recognition and responsibility. The statute acknowledges the cultural worker as a professional subject who as any other employee is entitled to worker rights and protections; by contrast, the statute aligns with the neoliberal logic of self-responsibilities, transferring the financial and bureaucratic burden of social protection from the state onto individuals. In practice, cultural workers are required to pay their own health and social insurance contributions, file their own tax declarations, and secure their own professional stability. This illustrates the paradox of autonomy: a framework designed to empower cultural professionals simultaneously entrenches their vulnerability by isolating them as individual economic units rather than members of a collectively protected workforce. The following section examines several types of funding schemes coordinated by public institutions and available to cultural workers to support their artistic activities and specific projects.

5. The cycle of precarity and project writing as cultural capital: The case of the National Cultural Fund Administration (AFCN)

The Administration of the National Cultural Fund (AFCN) functions as an important benchmark for independent cultural operators in Romania, particularly in terms of transparency and predictability. The Administration of the National Cultural Fund is an autonomous public institution, subordinated to the Ministry of Culture, which has been operating at national level for 20 years (www.afcn.ro). Its mission is to finance projects supporting contemporary Romanian creation and cultural heritage, while its stated principles empha-

size cultural rights, access to culture, civic participation and performance in the development and implementation of cultural projects. (www.afcn.ro). These principles are particularly relevant to the present analysis because they frame AFCN not merely as a funding body, but as an institution expected to contribute to the development and professionalization of the independent cultural sector. The activity of this institution is conducted by a small team, consisting of a decision-making council and an executive branch, who with dedication and vision demonstrate that non-reimbursable financing can contribute to the development of the independent cultural sector, if they are managed properly.

Unlike other funding programmes (which are occasional), AFCN has introduced a predictable system, through 2 annual funding sessions, one opened in March and one in September. These two sessions could guarantee cultural workers with a coverage of the entire year with cultural activities, although in reality both sessions of projects, those submitted in March and those submitted in September are carried out in the same period (April-November for projects selected in September, the previous year and the period May-November for projects selected in March). This overlap is a consequence of the dependence of AFCN funds on national budgets adopted on an annual basis, with funding becoming available to beneficiaries (cultural operators and cultural workers) in March-April. However, being a process with a high degree of predictability, the launch of the sessions being fixed for each year (1st of March, respectively 1st of September), cultural workers plan their activities according to this calendar. AFCN therefore provides procedural predictability without necessarily providing professional continuity, as predictable application deadlines coexist with a concentrated implementation period.

The predictability of the funding calendar does not, however, guarantee access to funding. AFCN provides funding across several cultural fields, including written culture, performing arts, visual arts, cultural heritage, and cultural education. Cultural operators register their applications/bids in a simplified procedure using a digital platform (which was progressively updated and modified in accordance with digital progress), making bureaucratic obstacles a lesser burden. In terms of complexity of the application, it could be argued that the AFCN applications are less detailed and developed than those that must be prepared by cultural organizations for European cultural funding programmes, nonetheless project planning has to be equally rigorous. The planning process may be even more demanding given the short implementation period, which adds more pressure on cultural workers, weakening their relationship with the funding institution and subjecting their statute to vulnerability.

Unlike most funding authorities that rely only on annual funding schemes, AFCN grants multi-annual funding projects, intended to convey a certain stability and predictability to independent cultural operators (making funding available for more than 1 year, for two, even three years). Although this approach is relevant,

the mise en oeuvre is less consistent because multiannual fundings are allocated to a limited number of organizations (13 projects are funded every year), so it would be inappropriate to consider that it leads to a significant improvement of the condition of the cultural worker. In terms of the amounts that are granted, they are established at a maximum of 250,000 lei (roughly 50 000 euros) for annual projects and a maximum of 500,000 lei (cca 100 00 euros) for multi-annual projects, amounts intended to cover all expenses included in the project (artistic, logistic and administrative). Each project has to be co-funded by the grant receiver, and there is no condition by which the 20% co-financing that the organization must ensure must come from economic revenue within the project (ticket sales, tax levies, etc.), so co-funding is usually generated through sponsorship and voluntary work of artists or administrative staff. The absence of a market revenue requirement may represent less conditionality, but it can also reinforce dependence on public funding. For certain types of projects, such as cultural-educational projects implemented in rural communities, the criteria for generating economic revenue would be counterproductive and would discourage applicants from being interested in extending culture to disadvantaged areas. Nevertheless, if public funding covers all the expenses of a project, the motivation to make cultural projects competitive on the private market is reduced. The cost of cultural activities per beneficiary is often difficult to cover through ticket sales and other forms of private revenue. Public funding therefore appears necessary, while simultaneously maintaining a structural dependence on the funding system.

AFCN also has a rigorous selection process of winning applications, and the success rate varies from one third to one fifth of the applications submitted, depending on the thematic area for which the project is being applied. AFCN is widely regarded within the sector as a credible and transparent funding institution, which is why the annual number of applications can reach even 1500. Interest in the funding granted by AFCN has grown in a natural climate of evolution of the cultural sector, which after more than 35 years since the anti-socialist revolution, has acquired a certain autonomy, direction and vision. The competition for obtaining funding is quite high, especially since the opportunities have an increased frequency through seasonality (bi-annual), making project-writing competence an increasingly important form of cultural and administrative capital. To respond to this unwritten conditionality, many cultural operators have focused on developing their skills in writing funding applications, following indicators and evaluation grids designed to improve the quality of these commitment documents drafted with technical mastery. The situation is changing, however, with the increasingly applied use of virtual assistants based on artificial intelligence, the use of which expands access to financing for cultural operators who previously failed to meet those criteria related to the technical quality of project writing. We can thus speak of an increase in competition for the same overall budget (from 1200 annual applications in 2023 to 1500 annual applications in 2025). This increase is an additional proof that the public financing system is considered the only solution for the realization of projects, without however

leading to the consolidation of the status of the cultural worker.

Another issue related to project writing concerns the increasing marketization of the process, as access to public funding becomes structured around competition between projects. This raises the question of whether funding follows project ideas or whether project ideas increasingly adapt to available funding opportunities. Missing a funding deadline may effectively mean losing access to another six-month window of professional and financial stability. The consequences of this situation are related to the quality of the projects, because the time taken for their preparation is not always sufficient, as work calendars overlap. For example, during the period in which a new funding application is prepared (especially in September), the cultural operator and the cultural workers are engaged in the implementation of another project and also in the preparation of the reporting documents, because in November all reports have to be submitted (in the form of massive files-*bibliorafturi*, symbols of the Romanian state bureaucracy). AFCN therefore provides procedural predictability without necessarily providing professional continuity, as predictable application deadlines coexist with a concentrated implementation period.

6. Ephemeral miracles: cultural capitals as symbols of transformation

Another relevant case for understanding the dynamics of the Romanian cultural workforce is the European Capital of Culture (ECoC) programme. Romania hosted the title in Sibiu in 2007 and in Timișoara in 2023, the latter initially scheduled for 2021. As previous studies have shown (Immler et al., 2014; Tsagkaridis et al., 2017; West, 2022), the ECoC programme can mobilize local cultural ecosystems around cultural, tourism and community-development objectives. For the purposes of this article, however, the relevant question is whether this temporary concentration of public resources produces sustainable improvements in the working conditions of cultural workers or merely suspends precarity during the title cycle.

Timișoara's trajectory after obtaining the ECoC title in 2016 was marked by institutional changes and by a reconfiguration of the programme's governance. The postponement of the title year from 2021 to 2023 due to the COVID-19 pandemic coincided with a change in local administration and the establishment of new institutional architecture. The Timișoara Project Centre became responsible for managing projects funded by the municipality, while the Timiș County Centre for Culture and Arts administered county-funded projects. The municipality remained the main public funder of the programme. Between 2022 and 2024, private sponsorships raised through ATCEC amounted to approximately €1.3 million, while official partnerships contributed an additional €427,000. Although these resources complemented public funding, the available public information does not allow for a systematic assessment of how sponsorship was distributed among cultural operators.

The ECoC cycle significantly altered the conditions under which Timișoara's independent cultural sector operated. Prior to the programme, the relationship between independent cultural workers and local and county authorities was less institutionalized and predictable. Indeed, funding sessions managed by both the city hall and the county council were organized annually, but lacked transparency and predictability, making access to funding less predictable for cultural operators. The period 2021–2024 was characterized by an exceptional concentration of cultural activity and public funding, particularly through the Timișoara Municipality Project Centre. This contributed to the consolidation of networks among cultural operators, supported new creative initiatives and capacity-building processes, and generated a greater sense of institutional predictability. However, similarly to other Romanian public funding schemes, most project implementation remained concentrated between May and November. Increased funding therefore mitigated financial insecurity during the ECoC cycle without eliminating the seasonal structure of cultural work. The Timișoara case thus illustrates an important mechanism of state-modulated precarity: increased public investment can temporarily reduce insecurity while leaving intact the institutional and temporal structures that reproduce it.

The funding mechanism adopted by the Timișoara Municipality Project Centre followed several procedural principles already established by AFCN, including transparent calls, independent evaluation and standardized reporting procedures. These mechanisms increased institutional trust and enabled some independent cultural operators to develop projects and programmes with greater continuity. The sustainability of these programmes, however, becomes uncertain when the exceptional funding associated with the ECoC cycle declines and municipal budgetary priorities shift. This exposes a central paradox of culture-led transformation: temporary increases in public investment may strengthen cultural organizations and professional networks without necessarily creating the conditions for their financial sustainability beyond the funding cycle. At the same time, the expansion of public funding was not accompanied by equivalent mechanisms capable of ensuring professional continuity between funding cycles. Cultural organizations therefore strengthened their capacity to access and implement public grants while remaining structurally dependent on the continuation of those grants. The ECoC programme has left behind important institutional and infrastructural legacies—notably the Timișoara Project Center and four rehabilitated cinemas now serving as cultural venues, employing cultural workers, many of whom originated from the independent sector.

The ECoC experience therefore did not create precarity in Timișoara's independent cultural sector; rather, it temporarily alleviated some of its effects while simultaneously reinforcing dependence on project-based public funding. In this sense, the post-ECoC contraction makes visible the distinction between temporary cultural investment and structural professional security.

7. Cultural representation outside Romania: access and dependency for independent cultural workers

A further dimension of state-modulated precarity concerns access to public resources for the international representation of Romanian culture. This dimension is particularly relevant because international mobility and visibility are important professional opportunities for independent cultural workers, while access to these opportunities remains partly mediated through public institutions (Grincheva, 2024). This activity is carried out primarily through two institutional channels: the Romanian Cultural Institute (Institutul Cultural Român – ICR) and the Department for Romanians Abroad (Departamentul Românilor de Pretutindeni – DRP). Both bodies manage public budgets dedicated to cultural diplomacy and allocate funds to independent cultural operators through competitive grant procedures.

This paper examines the procedures implemented by both institutions in 2024 and 2025, focusing on the value of grants awarded, criteria for allocation, number and type of funded projects, and the degree of accessibility for independent cultural actors. These indicators provide insight into how the state and its subordinate institutions conceptualize cultural participation and the autonomy of the independent cultural sector. Rather than assessing these programmes solely in terms of the resources they distribute, the analysis examines whether their institutional design expands the professional autonomy of independent cultural workers or reproduces their dependence on periodically allocated public resources.

The Romanian Cultural Institute functions as an autonomous administrative authority with legal personality, under parliamentary supervision. Its mission is to represent, promote, and protect national culture and civilization both domestically and internationally. The Institute operates a network of 18 branches in 17 countries and is a member of the European Union National Institutes for Culture (EUNIC). Each year, the ICR implements a non-reimbursable funding scheme – the Cantemir Programme – open to both public and private or non-governmental cultural operators. Approximately 20 projects receive funding annually (roughly one-third of all applications in 2024 and 2025), covering two main domains: visual arts and performing arts. The evaluation criteria emphasize artistic quality and originality, international visibility, European cooperation and partnerships, audience development, sustainability and intercultural dialogue. (Programul Cantemir <https://www.icr.ro/categorii/programul-cantemir>).

Although these criteria provide a formal framework for evaluation, several of them, such as artistic excellence, originality or artistic relevance- necessarily involve qualitative judgement. The existence of standardized criteria therefore increases procedural transparency without eliminating evaluative discretion. The public call for evaluators represents a procedural mechanism intended to increase transparency in the selection process. The application process itself is relatively straightforward and user-friendly, encouraging participation of independent cultural operators that are confident that they can professionally navigate through the

bureaucratic conditionalities. However, competition remains limited, partly due to the low visibility of the programme and partly due to the recurrence of funding to the same institutions and artists. Where recurrent beneficiaries can be identified, this continuity may reflect accumulated institutional capacity and experience in accessing international cultural funding. At the same time, it raises the question of whether less established independent operators have comparable capacity to access these resources.

The value of the funding granted is 100,000 lei (about 20,000 euros), with beneficiaries being required to contribute 10% of the value of the project for its implementation. The amount of funding covers expenses related to personnel, artists invited to the project, accommodation, transport, promotion, and is intended for small-scale tour projects. In addition to the low amount of funding, the period in which projects can be implemented extends from November to December, which affects the ability of organizations to carry out high-quality projects (the time for planning, implementation and then settlement of expenses is about 6 months - April/May-November). In theory, this period may seem sufficient, but for smaller organizations, without specialized workers on each of these stages of a project, it is a challenge, from which both the workers involved and the quality of the implemented project end up suffering. In this context, the ICR's funding mechanism appears to sustain established actors, while inadvertently marginalizing smaller, emerging or experimental initiatives that lack administrative capacity- a pattern consistent with broader critiques of state-led cultural diplomacy (Immler & Sakkers, 2014). The relevance of the Cantemir Programme to state-modulated precarity therefore lies less in the existence of competitive selection itself than in the temporary and project-based character of the support provided. International visibility may expand the professional capital of cultural workers, but it does not necessarily provide continuity of employment, income or social protection between funding cycles. The same structural pattern identified in domestic funding thus reappears at the level of international cultural representation: the state enables professional opportunities while leaving the economic risks associated with discontinuity largely with cultural workers and organizations.

The funding programme managed by the Department for Romanians Abroad (DRP) provides a different example of state-supported cultural activity outside Romania, combining cultural objectives with policies directed towards Romanian communities abroad. This structure, which at certain times had the statute of a ministry, develops and implements the government strategy in the field of relations with Romanians who live abroad, in accordance with the major foreign policy objectives of Romania and with the Government Program. In 2025, DRP funding was organized around six programmes: Education, Culture, Spirituality and Tradition, Civil Society, Media, and Community.

At the procedural level, the funding scheme provides applicants with published guidelines, evaluation criteria and the documentation required for submission. In the 2025 funding cycle analysed here, applicants could submit a maximum of two projects, provided that they belonged to different programmes. Applications

could be submitted across several deadlines during the year and were subject to continuous evaluation, while the total budget available for the funding cycle was not announced at the opening of the first session. This creates a distinction between procedural accessibility and financial predictability: applicants may know how to apply without necessarily knowing the overall volume of resources against which their applications compete.

An analysis of the publicly available list of projects funded in 2025 indicates that more than 60% of the selected projects were either proposed by religious organizations or centred on themes explicitly associated with national, spiritual or traditional identity. The relevant issue is therefore not whether these forms of cultural expression are legitimate, but whether their predominance narrows the range of cultural practices through which Romanian communities abroad are publicly represented. This pattern may be interpreted as a form of symbolic instrumentalization of culture, in which public funding privileges particular representations of national identity, especially spiritual and traditional ones, over a broader spectrum of contemporary, plural and intercultural cultural expressions. For independent cultural workers, the consequence is not necessarily exclusion from public funding, but a funding environment in which access may depend on the extent to which cultural projects correspond to institutionally prioritized forms of cultural representation. State-modulated precarity thus operates not only through the temporality and administrative conditions of funding, but also through the priorities that determine which forms of cultural production are more readily supported by the state.

Taken together, the ICR and DRP illustrate two distinct yet interrelated models of state involvement in cultural representation: a bureaucratic model of cultural diplomacy (through ICR), which emphasizes artistic excellence and international visibility, but tends to reproduce elite circuits of cultural production; and an identity-driven model of cultural nationalism (through DRP), which promotes symbolic cohesion among diaspora communities, yet marginalizes plural and critical cultural forms. For workers in the cultural sector, these opportunities do not provide stability or real access to platforms for artistic expression and community-oriented projects. The comparison therefore reinforces the central argument of this article: state support and precarity are not opposing conditions. Public institutions can simultaneously enable cultural production and international visibility while maintaining a system in which professional continuity, income stability and the risks associated with unsuccessful applications remain largely individualized.

8. Reflection on cultural labour conditions in Romania. Precarity, gender discrimination and seasonality

The average age of those engaged in these precarious forms of work (cultural sector dependent on

seasonal funding, paid roughly around the national salary average, but not throughout the entire year and with social insurance paid out of pocket), hovers around 35 years. Such precarity becomes increasingly difficult to sustain over the course of a professional career. Employment in the public cultural sector, by contrast, generally provides greater continuity of income and access to employment-based social protection. An independent cultural worker in Romania is typically ineligible for bank credit, whether consumer loans or mortgages, which condition in a consumption-driven society structured by demanding economic and social standards amounts to deep precarity (Murray & Gollmitzer, 2011). From a demographic standpoint, over half of Romanian cultural workers possess high qualifications and solid higher education (Bădulescu, 2017). The persistence of economic insecurity among highly qualified cultural professionals indicates that professional expertise alone does not mitigate the structural effects of seasonal and project-based funding. At the same time, the fragmented organization of cultural work can limit the capacity for sustained collective representation and policy advocacy (Hadley, S., & Gray, C., 2017). The persistence of cultural workers within such an unstable professional environment should not be interpreted simply as an acceptance of precarious conditions. Research on cultural labour has repeatedly shown how professional commitment, artistic identity and the intrinsic value attributed to cultural work can coexist with economic insecurity. This coexistence is important to the concept of state-modulated precarity because professional commitment can make prolonged uncertainty sustainable at the individual level without resolving its structural causes.

Studies also indicate that in Romania the share of women active in the independent cultural sector is higher than the European average (60–70% of all cultural workers) Compendium of Cultural Policies. (2025). The intersection between gender and precarious professional status may therefore produce differentiated experiences of insecurity. Women often occupy secondary, frequently invisible roles behind male artists (management, coordination, curatorship), which leads to the symbolic undervaluation of their work (it is not “creation,” but “planning and coordination”). Part of this dynamic involves self-exploitation, a mechanism that normalizes long-term acceptance of institutionally maintained precarity. Women strive to perform, to be validated, to deliver notable results; these ambitions are sustained by exhausting work unsupported by a social safety net (as reflected earlier). Within the neoliberal logic of culture (“performance, flexibility, network”) (McRobbie, 2009) professional autonomy becomes a constant pressure, internalized as total responsibility (self-exploitation). Women with families experience the seasonal or isolated character of cultural work and domestic responsibilities (childcare and housework). The result is increased precarity, where economic insecurity overlaps with emotional strain due to the erasure of boundaries between professional and private life. Precarity is more than an economic condition; it becomes a *modus vivendi* characterized by perpetual alertness and self-exploitation in the pursuit of “better results”, because beyond their paid tasks, women cultural workers

sustain entire relational networks, teams, collaborators, family, including support to anxious colleagues affected by precarity, and remaining at all costs available for caregiving. This affective labour, crucial to maintaining balance, is undisputedly invisible and undervalued. To navigate seasonal cycles successfully, the woman cultural worker must always be available and confident in her ability to balance competing demands, while this very availability becomes indispensable symbolic capital. In neoliberal terms, the woman is expected to demonstrate transversal management competencies across all domains of life in a perpetual search for equilibrium (Gill & Pratt, 2008)

Precarity also entails temporal precarity: the absence of stable schedules, overlap between implementation and proposal-writing, waves of exhausting work (writing applications, delivering events, preparing reports) followed by quieter periods that must be used to prepare new proposals, thus maintaining the rhythm of living from one grant to the next. The temporality of the independent cultural sector (with its peaks of intensity and competition) is incompatible with family life, which requires calm and predictability. As Judith Butler reminds us in writing on “precarious bodies,” here the woman’s body becomes the site where temporalities collide: fatigue, anxiety, and guilt are material effects of precarity (Zaharijević, 2022). Women cultural workers often articulate not only a strong work ethic but an ethic of passion—“I do this because I love it, not for the money.” Yet when passion combines with precarity and motherhood, a triple guilt emerges: not achieving sufficient results (for not working “enough”), not being sufficiently present in the family, and failing to balance the professional and personal spheres. Self-discipline follows, a form of neoliberal time management (Scharff, 2015) in which managing precarity becomes an individual responsibility rather than an institutional problem within market logic, where each person must find their own solutions and balance. Seasonality should therefore not be understood simply as several months without funded projects. It reorganizes professional time around the funding calendar, transferring the responsibility for bridging the intervals between grants to the individual cultural worker.

This dynamic at the level of individual biographies is paralleled by a broader landscape in which collective action is equally constrained. Although cultural workers participate in consultations, provide feedback, and often maintain professional relationships of mutual understanding with funding authorities, several structural factors limit collective influence: divergent interests between the independent and public sectors, as well as limited capacity to exert influence on political decision-makers. To these adds the lack of unity within the independent field: few common platforms, weak solidarity around key issues (e.g., the abrupt introduction of the SDPC digital platform was criticized by a large group of cultural workers, but such reactions are rare and do not produce specific impact), the persistence of political clientelism, especially at local and regional levels where budgets are managed by entities with limited cultural expertise.

Clientelist mechanisms reproduce themselves with minor change of dynamics over the years, eroding

trust among cultural operators and discouraging attempts to diversify public funding sources because certain sources are de facto inaccessible. This inaccessibility is not openly formalized through direct allocations to specific cultural operators but camouflaged within flawed evaluation processes that selectively open and restrict budgets to specific operators. These practices become the norm, through unsustainable rejection criteria and superficial handling of appeals (with no clear feedback offered to the operators that are rejected), leading to many cultural operators abandoning these funding lines altogether. Such approaches which are visible in some public institutions (at all levels) further vulneralize a sector already marked by precarity and where vulnerability emerges from lack of respect and non-transparent treatment of cultural operators, maintained and tolerated by the state. When the state signals that one cannot rely on what is presented as a competitive process, because political clientelism prevails, the relationship with the state becomes even more fragile. To clientelism mechanisms add the annualized funding schemes, i.e the seasonality of the granting system.

Funding applications that meet eligibility criteria are typically approved for project implementation periods running between April–May and November, amounting to no more than seven months of paid work. Consequently, cultural workers receive income for approximately seven months of the year, with five months of unpaid inactivity. The state provides no compensation or bridging mechanism for these time gaps, leaving cultural operators exposed to economic insecurity and leading many to abandon the sector in search of more stable employment (with social and health security covered). Over the past five years, a few multiannual funding schemes have been introduced (AFCN, Center of Projects Timisoara), but they maintain the same structural limitations: funding nominally covers several years, but in reality each fiscal year must end with a full technical and financial report, and the next tranche is released after the national and institutional budgets are approved—typically in April (so the multiannual funding is rather an annual funding with a multiannual planning). The annual rhythm of uncertainty creates a systemic dependency that undermines the sustainability of cultural work and the capacity of imprinting vision to cultural projects. It also perpetuates the image of the cultural sector as one of “project oriented” rather than “profession rooted” thereby reinforcing the temporary and fragmented character of artistic labour.

The systemic reliance on fragmented, project-based rhythms is further intensified by the bureaucratic infrastructure, one of the main challenges for cultural operators. The beneficiaries must submit extensive documentation at the end of each project cycle, making the procedures for non-reimbursable grants a complete burden to cultural operators. Each expenditure must be justified with multiple supporting documents (in compliance with the legislation in the field of procurement and finance): requests for quotations, price offers, minutes of service-provider selection, delivery and acceptance reports, consumption receipts, and others. These rules formally ensure financial accountability, but in practice they also develop a bureaucratic labyrinth that is misaligned with the realities of small-scale cultural production (understaffed and under resourced).

Moreover, the evaluation of the reporting is often conducted by accountants and financial experts within funding agencies, professionals with qualifications in finance and procurement that have minimal understanding of the cultural sector's specificities. The evaluations regarding what constitutes an "eligible" activity are made according to accounting standards with no relation with artistic or social value of the project. This dynamic has created a widespread sense of frustration within the sector: a perception that bureaucratic legitimacy overweighs cultural contribution and value. To reinforce this perspective, many cultural operators, report that the administrative workload overshadows the creative process, diverting time and energy from artistic production to compliance with bureaucratic rules and procedures. This bureaucratization contributes not only to worker exhaustion and precarity but also to the alienation of audiences, particularly in smaller urban areas where cultural participation is already fragile (because less time is dedicated to the actual implementation of the project). The very process of verification and approval process for financial reports is itself a measure of the state's control over the cultural workforce. Because cultural budgets lack predictability and private sponsorship remains minimal, the timing of final payments is essential for the actual survival of the cultural worker, becoming critical. Typically, the last 20% of the grant is reimbursed only after the final report is approved by the bureaucrats verifying procurement and finance documents. This means organizations have to pre-finance the last tranche from their own funds, often through personal loans from cultural workers who, in effect, subsidize the state's cash-flow delay. The difficulty of accessing credit mechanisms for non-governmental organizations in Romania aggravates the situation: cultural actors cannot access bridging loans and must instead rely on personal financial sacrifices (deepening precarity). These mechanisms exemplify how state-led support paradoxically modulates and encourages precarity. While publicly presented as "support for culture," such mechanisms expose workers to chronic financial instability and lack of predictability thus reinforcing the very vulnerabilities they claim to alleviate.

Conclusion

In sum, the dynamics outlined above point to a cultural ecosystem shaped as much by its support structures (institutions, funding mechanisms, bureaucratic instruments) as by its vulnerabilities (seasonality, no social and health security, work overload, etc). The Timișoara European Capital of Culture case demonstrates that concentrated public investment can temporarily strengthen a local cultural ecosystem without necessarily altering the project-based mechanisms on which professional continuity depends. More broadly, the Romanian case reveals a central paradox: public funding enables independent cultural production while its seasonal, project-based and administratively demanding organization can simultaneously reproduce professional insecurity. This is the condition conceptualized in this article as state-modulated precarity. The prevalence of competitive project applications also makes administrative competence an increasingly important

component of cultural work, alongside artistic and professional expertise. The challenge for cultural operators is not to produce better applications, but to build sustainable frameworks that recognize cultural work as continuous, socially valuable labour, with a solid and predictable system of funding and protection for cultural work.

The Romanian cultural funding system reveals a strong contradiction between discourse and practice: while promoting autonomy and creativity, it embeds cultural work in precarious, bureaucratically controlled structures (that complicate rather than create accessibility through the procedures they set up and implement). The neoliberal ideology of “competition” and “project efficiency” legitimizes instability as a natural condition of artistic labor, not in an authentic market competition but in a competition regulated by state, leading to the state-modulated vulnerability. Meaningful change is required through redefining the relationship between the state and cultural workers, from a transactional model of project writing and execution to one of partnership and long-term investment (where cultural workers can regain control over their professional decisions and over their personal lives that are significantly transformed by the seasonality of work). Should there be no paradigm shift, public cultural policy will continue to sustain the very vulnerabilities it claims to address, perpetuating a cycle where support turns into a mechanism of dependence and autonomy remains rhetorical, enhancing the state-modulated precarity.

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